

IDAHO WATER RESOURCES BOARD

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Public Information Meeting on
Proposed Policy 32 Revisions
Boise, Idaho

TRANSCRIPT OF PROCEEDINGS

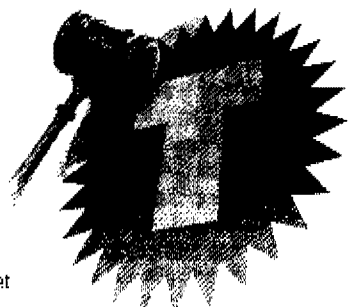
Held on February 5, 1985
before Gene Gray, Chairman

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A P P E A R A N C E S

Present:

Governor J. V. Evans

Sherl Chapmann, IWUA

Harold C. Miles, Idaho Wildlife Federation

Marjorie Geddes Hayes, Idaho Consumer
Affairs, Inc.

Ronald L. Fahn, IRC

John W. Keys, Bureau of Reclamation

Alan D. Jensen

Roy M. Watson

Fred Stewart

Ed Ghen, Bureau of Land Management

Jim Nee, U.S. Fish and Wildlife Service,
Boise

Michael D. Crapo, U.S. Senator

Jack Streeter, SWIDH, Mountain Home

John H. Brandt

Richard Haumann, Nampa and Meridian
Irrigation Dist.

T.G. Nelson, Idaho Power Company

M. Reed Hansler

John Hatch, IFCE

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1 BOISE, IDAHO
2 February 5, 1985

3
4 CHAIRMAN GRAY: Ladies and gentlemen, we would
5 like to welcome you to the 9th public hearing that the
6 Idaho Water Resource Board is having on the policy
7 changes for the Idaho State Water Plan and Policy 32.
8 I'd like to introduce some of the people with me.

9 I have J.D. Williams on my left. J.D. is an
10 attorney from Preston, Idaho, and is also the mayor of
11 Preston. Jim Shawver, next to me. Jim is Secretary of
12 the Idaho Water Resource Board and also farms in the Eden
13 area. On my right is Jim Ride -- or Dave Rydallch. Sorry
14 Dave. A member of the committee tonight and farms over
15 in the St. Anthony area. Don Kramer, past Chairman of
16 the Idaho Water Resource Board, farms in the Castleford
17 area. And Wayne Haas, Department of Water Resources.

18 Does everyone have a copy of the Currents
19 magazine, the paper we have?

20 UNKNOWN SPEAKER: No. Do you have some extra
21 copies?

22 CHAIRMAN GRAY: We do.
23 Governor Evans, I'll --

24 UNKNOWN SPEAKER: Thank you.

25 CHAIRMAN GRAY: Part of the ongoing job of the

APPEARANCES

1 Present:
2 Governor J. V. Evans
3 Sheri Chapman, IWUA
4 Harold C. Miles, Idaho Wildlife Federation
5 Marjorie Geddes Hayes, Idaho Consumer Affairs, Inc.
6 Ronald L. Fahn, IRC
7 John W. Keys, Bureau of Reclamation
8 Alan D. Jensen
9 Roy M. Watson
10 Fred Stewart
11 Ed Ghen, Bureau of Land Management
12 Jim Nee, U.S. Fish and Wildlife Service, Boise
13 Michael D. Crapo, U.S. Senator
14 Jack Streeter, SWIDH, Mountain Home
15 John H. Brandt
16 Richard Haumann, Nampa and Meridian Irrigation Dist.
17 T.G. Nelson, Idaho Power Company
18 M. Reed Hansler
19 John Hatch, IFCE
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1 Idaho Water Resource Board is to amend, from time to
2 time, the State Water Plan and, of course, every five
3 years, to review and totally update the State Water Plan.

4 And what we're here before you for today is
5 to go over pro -- proposed revisions of Policy 32 of the
6 Water Plan. It has not been adopted by the Idaho Water
7 Resource Board, but we have accepted draft language.

8 If you'll turn to page two and page three of
9 that document, you'll find that which we have accepted to
10 take to the public for public review, and that is what we
11 wish you to testify today on.

12 Page four and page five is the agreement that
13 was reached between the Governor's office, the Attorney
14 General's office, and Idaho Power Company.

15 Half of page five, page six, and page seven
16 is part of the legislative agreement. Policy 32 falls
17 into, and makes up, or will make up, part of that
18 agreement.

19 If you'll look at the edge of page seven, on
20 the right-hand side, you'll see seven items that must
21 happen, by May 15, to validate the agreement between the
22 three acting parties.

23 No. 1 is to amend the State Water Plan.
24 Again, that's why we're before you today, to review
25 Policy 32, to get your input, your criticism, your

1 addendums, or whatever you wish to give us.
 2 No. 2, the legislative package must be
 3 passed.
 4 3, appropriate action by the Public Utilities
 5 Commissioner, or legislature, as -- as called by the
 6 agreement.
 7 4, an appropriate order by the Federal Energy
 8 Regulatory Commission, acceptable to the parties, issued
 9 by that agency.
 10 5, the Idaho PUC must dismiss the 1977
 11 petition by the Idaho ratepayers.
 12 6, if required, since we have -- Idaho Power
 13 has dams bordering the state of Oregon, if need be, it
 14 may have to be okayed by the PUC, State of Oregon.
 15 And 7, enactment of the legislature on the
 16 subordination language shown on Exhibit 7A and 7B, just
 17 to the -- just to the left.
 18 What we would like you to do is to approach
 19 the podium, give us your name, your address, your
 20 telephone number, and we will start with testimony.
 21 First, the Board would like to call
 22 John Evans, Governor of the state of Idaho. Governor?
 23 GOVERNOR EVANS: Thank you very much,
 24 Chairman Gray and members of the Board, ladies and
 25 gentlemen.

1 I want to thank the Board for its cooperation
 2 in implementing the Swan Falls Compromise Agreement. The
 3 Water Plan revisions you are considering are consistent
 4 with both the letter and the spirit of that agreement.
 5 I come before you today to urge your approval of these
 6 proposed revisions, in order to resolve the complex and
 7 urgent problems associated with the Swan Falls water
 8 rights controversy.
 9 I will now offer some brief comments on some
 10 of the specific reser -- revisions that are before you.
 11 I am convinced that the new minimum stream
 12 flows at Murphy gage will provide needed additional
 13 protection to fish and wildlife interests, as well as an
 14 adequate hydropower base. The Board acknowledged, in the
 15 original plan, that three -- 3,300 cfs was not a
 16 sufficient level to provide for fish and wildlife needs.
 17 By raising the summer minimum flow to 3,900 cfs, the
 18 Department will be able to manage the river in a manner
 19 which should enhance our Snake River fisheries.
 20 By raising the winter flow to 5,600 cfs, the
 21 Board will be recognizing the greater value placed on
 22 hydropower generation at that time. It is appropriate to
 23 dedicate a greater quantity of water to hydropower
 24 generation during the nonirrigation season. This new
 25 winter flow reflects a reasonable level for our state to

1 try to protect.
 2 The new flows at the -- the Murphy
 3 gage, coupled with the retention of a zero flow at Milner
 4 dam, will allow for significant new agricultural
 5 development without threatening minimum flows. It is
 6 important to the future of Idaho that we allow for some
 7 additional development. With wise and careful
 8 stewardship, we will make that water -- we will make what
 9 water remains available sufficient for all of our
 10 society's needs well into the next century.
 11 Agricultural uses. It is important to
 12 emphasize, as your proposed Policy 32C does, that we
 13 scrutinize carefully any proposed new uses for the
 14 limited water which remains for allocation to
 15 agricultural uses. By choosing with care which -- those
 16 new projects should go -- that -- those new projects that
 17 should go forward in the public interest, we should be
 18 able to meet new agricultural needs for many decades to
 19 come.
 20 But if we were -- but if we were to continue
 21 to im -- approve new uses on a first come, first serve
 22 basis, we would soon exhaust the available water supply
 23 and reduce the opportunity for modest expansions for our
 24 many small, family farms **in Idaho.
 25 I also support the proposed reservation of

1 150 cfs for new domestic, commercial, municipal, and
 2 industrial uses. While these uses are largely
 3 nonconsumptive, it would be very shortsighted if we did
 4 not make provision for a reasonable amount of future
 5 depletion which these new uses can be anticipated to
 6 demand.
 7 DCMI uses are vital to the potential growth
 8 of our economy and our communities. By reserving this
 9 block of water, we can assure new businesses they will
 10 have an adequate supply of water to meet their needs if
 11 they decide to locate here in Idaho. This will greatly
 12 assist us in our effort to create new jobs for Idahoans.
 13 Finally, I would like to comment on the one
 14 proposed revision which was not specifically mentioned in
 15 the Swan Falls Agreement. That is the new policy on
 16 stored water, for management purposes, contained in
 17 Policy 32J.
 18 This represents an innovative solution to the
 19 problem of protecting minimum flows established by the
 20 State. By acquiring stored water, the State will be in a
 21 position to raise the public's confidence that we can
 22 effectively protect in-stream flows. Coupled with the
 23 proposed general adjudication of the Snake River Basin,
 24 this policy will give the Department an opportunity and
 25 important tool to manage this vital resource.

1 In closing, I want to stress how important it
2 is to the state of Idaho and to its water users, our
3 farmers and electrical ratepayers alike, to establish a
4 balance between in-stream values and out-stream
5 depletions. I strongly believe the revisions before you
6 strike a balance that will serve our citizens well for
7 many years to come.

8 Thank you for the opportunity to comment on
9 **is this important issue. And, of course, I'll be very
10 happy to respond to any of your questions.

11 CHAIRMAN GRAY: Thank you, Governor Evans.

12 Mr. Williams, questions for the Governor?

13 MR. WILLIAMS: None.

14 CHAIRMAN GRAY: Mr. Dunn?

15 MR. DUNN: I have none.

16 CHAIRMAN GRAY: Mr. Rydatch?

17 MR. RYDALCH: (Unintelligible.)

18 CHAIRMAN GRAY: Mr. Kramer?

19 MR. KRAMER: Thank you, Governor, for your words.
20 I have none.

21 CHAIRMAN GRAY: I would like to thank you and your
22 staff, Governor, for the many, many hours and effort that
23 have been put into this. It is exemplary of the
24 leadership we have in this state. Thank you very much.

25 GOVERNOR EVANS: Thank you very much, Mr. Gray.

1 I might add that I've been most pleased to see how the
2 Water Resource Board and the Department of Water Resource
3 staff have done, particularly Ken Dunn, your director.
4 He has worked very hard to -- to work with us during the
5 entire summer, to make sure that you had input
6 constantly.

7 We had the advisory committee working very
8 closely with you and, of course, your Chairman served on
9 that advisory committee, as well as Mr. Williams. And we
10 apprec -- we're appreciative of the efforts that all of
11 you put forth. It has meant that we've been able to go
12 to the legislature and what it looks like right now,
13 we're receiving a -- very strong and -- and close to
14 unanimous support for the adoption of the necessary
15 legislation to implement the Swan Falls Agreement. And,
16 of course, all of us are very happy about that.

17 Thank you very much.

18 CHAIRMAN GRAY: Thank you very much.

19 The Board would call Sherl Chapman, Idaho
20 Water Users Association.

21 MR. CHAPMAN: Mr. Chairman, members of the Board,
22 my name is Sherl Chapman. I represent the Idaho Water
23 Users Association, with offices at 410 South Orchard, in
24 Boise, Idaho. Telephone, 344-6690.

25 I, too, am please to stand here today and

1 bring you the testimony that I have been authorized to
2 give to you today. But before I do that, I would like to
3 commend the Board.

4 As you well know, I testify before many
5 agencies and many boards in a year's time, and it's very
6 few boards that I see that will take the time to attend a
7 hearing such as this, so that the Board members
8 themselves get the input from the public, rather than
9 having just a Hearing Officer and then reading a
10 transcript at some later date.

11 And so, I want you to know that our water
12 users appreciate your interest and your involvement in
13 these hearings throughout the state of Idaho.

14 Our association, which represents some 150
15 irrigation districts and canal companies throughout the
16 state of Idaho, both in and outside of the Snake River
17 Basin, have almost unanimously supported the changes to
18 Policy 32.

19 We have a few who are concerned about some
20 provisions in the legislation, but very few people are
21 reluctant to adopt that. **

22 The Policy 32 that relates to the minimum
23 stream flow, the 3,900 cfs in the summer and the
24 5,600 cfs in the wintertime, we feel are adequate to
25 protect the hydropower base, fish and wildlife, and other

1 values in the stream. I'm sure that you have received
2 criticism in the past, in past hearings, and I know that
3 it has occurred in the legislature that the 3,900 cfs
4 level and the 5,600 are too low to protect fish and
5 wildlife and, in fact, they will cost millions of dollars
6 insofar as -- as Idaho's ratepayers go.

7 There was a study published some time back
8 that indicated that lost power generation would cost the
9 Idaho Power ratepayers some \$52 million per year. That
10 study was flawed in several areas, particularly when
11 discussing the elasticity of electrical energy demand.
12 And another analysis of that investigation showed that,
13 in fact, the cost might be something like \$29 million per
14 year with a -- an increase to the state, in added value,
15 of some \$78 million a year, which was in direct
16 contradiction to the earlier study.

17 I think that points out the breadth of error
18 in assumptions that can be made in economic analyses, and
19 I would stand before you today just saying that,
20 certainly, we have food surpluses at this point in time.
21 We know, from past history, that that will not continue,
22 that we must protect our options for the future.

23 With regard to the DCMF flows and
24 aquaculture, our association had some reservations
25 initially, when we understood that the Water Board was

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1 going to reserve, or wanted to reserve, some 150 cfs out
2 of the potential 600 cfs that might be allocated for
3 consumptive uses in the future.

4 However, with the inclusion of aquaculture in
5 there, and the realization that continued economic
6 development outside the agricultural sector was as in
7 much of Idaho's interest as agricultural development, we
8 agreed to support that provision also.

9 Again, the fish and wildlife considerations.
10 We feel the minimum flows do protect fish and wildlife.
11 We're talking about the addition of 600 cfs, or about
12 270,000 gallons per minute, added to the existing minimum
13 stream flow. Now, that's a big slug of water. And it's
14 going to help those fish, it's going to help the
15 wildlife.

16 I was raised in the southwestern Idaho area,
17 I've seen the Snake River since I first traveled there
18 when I was a youth to fish and hunt, and I know that we
19 have additional needs there. But at the same time, I
20 feel personally, and our association feels, that the 600
21 cfs will be more than adequate to take care of those
22 concerns.

23 We had concerns over the Policy 321 that
24 related to full utilization of existing storage prior to
25 new storage developments. We are still concerned about

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1 new lands within the Snake River Basin, that water would
2 be taken from the Snake River, from the source of
3 hydropower generation. And because of that development,
4 that a cost to the ratepayers of about \$52 million per
5 year could be anticipated, with an added value of the
6 development of only about \$49 to \$50 million, or a net
7 loss.

8 One of the assumptions that I'm most familiar
9 with, was that the demand for energy would not change if
10 the price of energy increased, which we know to be false.
11 And the McGrath Study, which was a critique and an
12 analysis of the Hamilton study, went through that
13 analysis, reviewed those assumptions in light of what are
14 more realistic assumptions, and -- and what has happened
15 historically.

16 And their estimate, or his estimate, of what
17 might be the annual cost, due to decrease in consumption
18 of energy and the -- the modification of the uses of
19 water, and the methods of irrigation, that the impact
20 might approach a maximum of \$20 million per year but
21 that, in fact, the added value, because of growing
22 population and growing demands in the future, would be
23 more like 578 million.

24 And so, based on that and other
25 considerations, we felt that the 3,900 and the 5,600 was

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1 that. We do not understand what, quote, full utilization
2 of storage might be. But we have received assurances
3 from Board members and from the Department of Water
4 Resources that whatever application of that terminology
5 occurs, that it will be reasonable and take into account
6 existing uses, as well as the other policies within the
7 proposed revisions. And that is satisfactory to us.

8 We -- we trust the Board, we trust the
9 Department of Water Resources, and we believe that
10 they'll be fair in carrying these out.

11 Mr. Chairman, members of the Board, as I say,
12 I'm pleased to hear -- to be here before you today to
13 support the revisions to Policy 32. Thank you.

14 CHAIRMAN GRAY: Thank you, Mr. Chapman.

15 Mr. Williams, any questions?

16 MR. WILLIAMS: Yes, just briefly. Sherl, going
17 back to the -- what you mentioned about this cost to
18 ratepayer study.

19 MR. CHAPMAN: Yes.

20 MR. WILLIAMS: Where you said -- you're saying
21 that the original estimates of the \$52 million loss was
22 flawed. Can you explain -- you talked about elasticity
23 of demand there.

24 MR. CHAPMAN: Yes. The original study, done by
25 Hamilton and Lyman, indicated that with development of

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1 adequate because, of course, our water users are
2 ratepayers, just as well as anybody else. And they're
3 not anxious to double or triple their power bills, just
4 in the name of saying that we need more development.
5 They took a close look at that. They feel more
6 comfortable with the McGrath Study than they do with the
7 Hamilton Lyman study.

8 MR. WILLIAMS: Thank you.

9 CHAIRMAN GRAY: Mr. Dunn.

10 MR. DUNN: I have none.

11 CHAIRMAN GRAY: Mr. Rydallch?

12 MR. RYDALCH: I have none.

13 CHAIRMAN GRAY: Mr. Kramer.

14 MR. KRAMER: I have none.

15 CHAIRMAN GRAY: Sherl, I have a couple, if I
16 might.

17 The way Policy 321 is -- is set right now, it
18 will be up to the Director of the Department of Water
19 Resources to determine when maximum utilization is set.
20 Could you, or your group, possibly define it as you see
21 it? How would you define maximum utilization of upstream
22 storage? Have you thought about that?

23 MR. CHAPMAN: Mr. Gray, yes we have. Our -- our
24 considerations of full utilization of storage, at this
25 point in time, would be that the storage be utilized as

1 it was originally allocated and contracted for in the
2 congressional authorization -- authorization because, of
3 course, most of those up stream reservoirs are federal
4 reservoirs. That would also require some coordination
5 and discussion with the Bureau of Reclamation and
6 Corps of Engineers.

7 CHAIRMAN GRAY: Mitigation -- the term mitigation
8 is defined under 321, about eight sentences up, just
9 above Policy 32J. Do you have any doubts the way
10 mitigation is defined? Would you -- would you expand it,
11 or might you otherwise define it, than the way it
12 appears?

13 MR. CHAPMAN: I think that the -- that the
14 definition of mitigation is going to take an awful lot of
15 thought, and I wouldn't have any -- any words of wisdom
16 for you at this point in time.

17 CHAIRMAN GRAY: Thank you very much.

18 MR. CHAPMAN: Thank you.

19 CHAIRMAN GRAY: The Board would call John Keys
20 please.

21 MR. KEYS: Mr. Chairman, I'm John Keys, with the
22 Bureau of Reclamation. Address is 550 West Fort Street.
23 telephone number is 334-1930.

24 As I started out with Mr. Chairman, I was
25 reminded that one time I stood up before a group where

1 and probably achievable.

2 We do have some questions and concerns about
3 Policy 32J and Policy 32I. We support the concepts
4 behind those two, but we do have some questions and
5 concerns.

6 In addition, we would encourage that the
7 explanatory language that's included in Currents, the
8 latest issue of Currents, be included in the State Water
9 Plan and be expanded, with some further definition and
10 explanatory comments. And I hope what -- my comments now
11 will tell you what I mean.

12 Now, I'll start out with 321. The basic
13 intent of Policy 32 is to better use existing reservoir
14 storage and to make more efficient and effective use of
15 the water in storage in the Basin.

16 We believe that these objectives could better
17 be achieved without getting into an argument of what
18 maximum use is. We think that if you went through an
19 inventory of water uses in the Basin, after you get
20 through with the adjudication process, and then look at
21 an expansion of the -- of the water bank concept, that
22 those objectives could be met better than getting into a
23 maximum use argument.

24 The expansion of the water bank program could
25 be tailored such that you could make it worth a person's

1 the chairman was a chairperson. And I fumbled around
2 with chairperson for a while, and then I came up with
3 chaircreature. And that went fine until I got kind of
4 flustered later on, and it came out Madam Creature.

5 So, I'll promise not do to that today.

6 CHAIRMAN GRAY: We've been called worse in all
7 cases.

8 MR. KEYS: Okay. Mr. Chairman, the Bureau of
9 Reclamation supports the proposed settlement of the
10 Swan Falls water right issue and it will work with the
11 Idaho Department of Water Resources and the Water
12 Resource Board to implement its articles and proposed
13 implementation.

14 We believe that the settlement is fair and
15 equitable, and it will allow necessary growth in the
16 Snake River Basin of Idaho. Additionally, we are glad to
17 see this settlement handled within the framework of
18 Idaho's water law and water rights.

19 The subject at hand today is proposed
20 revisions to Policy 32. In general, we think the
21 language, in Policy 32, that's been proposed is good. We
22 like the spirit and intent of that. It's good to see the
23 policy spelled out for the different uses; the domestic,
24 the M and I, the agriculture, and all of them. We also
25 think the minimum flows that have been set are reasonable

1 while to put his water or storage in such a bank.

2 Now, if the current -- if the current concept
3 of maximum use is included in 321, we feel that it should
4 be defined. In reading through the explanatory material,
5 it causes us some real problems, and let me give you some
6 examples.

7 We have currently, in the Snake River Basin,
8 about 5 million acre feet of storage. A lot of that
9 storage space has been built and depended on for
10 supplemental supply. Is a supplemental supply storage a
11 max use of reservoir space?

12 Storage space that's being held for expected
13 drought periods. We have carry over periods of up to
14 seven or ten years in some of our reservoirs. In other
15 words, we're having -- holding that water there for a
16 drought that would only occur once in every seven to ten
17 years. And does max use cover that storage there?

18 Storage space that's been built and reserved
19 for future uses. An example there, City of Pocatello
20 holds space in Palisades Reservoir for unexpected future
21 use beyond what their supply is now. Is that max use of
22 reservoir space?

23 And minimum pools that have been set aside
24 for recreation, fish, and wildlife purposes. I know that
25 the use of water in the Snake Basin has been justified

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1 for recreation, fish, and wildlife, but who says how
2 much? A good example there is the current case that we
3 have in Cascade Reservoir, where we're trying to
4 designate about 300,000 acre feet a minimum pool for
5 recreation, fish, and wildlife. Is that max use of
6 reservoir space?

7 We have some other concerns. Federal storage
8 space involves a Congressional authorization. If it's
9 determined that that space is not being used to its
10 maximum, how do we get the change there? Do we have to
11 go back to Congress for such a change in the allocation
12 of storage in the reservoir?

13 Now, somehow, the Water Resources Board would
14 have to deal with the spaceholders to get their trust, so
15 that they could really identify their use and the
16 availability of surplus storage. And we think, probably,
17 an inventory, at first, would be more than necessary to
18 start that process out.

19 It might take long periods of time to get
20 those authorities and contract changes necessary to get
21 that done. It might also take quite a while to get it
22 through your current water rights set up, to get the
23 change of nature of use, change of place of use, and that
24 sort of thing taken care of.

25 We're wondering also, do the proposed changes

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1 to the current water bank or rental pool in eastern
2 Idaho. The Bureau of Reclamation and Idaho Department
3 of Water Resources should jointly prepare a report
4 addressing how better water utilization in the
5 Snake River Basin could be achieved.

6 This study should include an inventory of
7 water needs of the existing spaceholders, the steps
8 necessary to get needed flexibility for new water supply
9 from existing storage, possibilities for a water or
10 storage marketing plan similar to the rental pool, and
11 other steps necessary to meet Policy 32.

12 Language should probably be included to
13 require the Department of Water Resources to show the
14 intent of the use of the surplus storage before release
15 is actually required by the Department of Water
16 Resources. Spaceholders would then not be arbitrarily
17 called upon to give up their space without knowing what
18 its intended use is.

19 Now, basically, I think we're talking
20 intended use as -- as to meet a minimum stream flow. But
21 what's it replacing upstream? Is it replacing a ground
22 water withdrawal, is it replacing a withdraw for
23 irrigation, that sort of thing. Here again, you get back
24 to better definition of what the water's being used for.

25 Policy 32J. In its current form, 32J is

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1 apply to private storage? There are only a few private
2 reservoirs on the system. But if a private reservoir
3 owner refused to give up his storage, do you hold up the
4 development of other storage in the Basin because of
5 that?

6 In other words, the proposed policy says that
7 unless you have max use, you can't build new storage. If
8 a private reservoir owner refused to give that up, do you
9 hold up the -- the development of new storage in the
10 Basin?

11 And then, what -- what right would the Water
12 Resource Department have in taking that storage? In
13 other words, would you use eminent domain or what?

14 Basically, these are some of the problems
15 that we have with the maximum use concept. We think that
16 those problems could be overcome with the proper
17 definitions, implementation procedures, and so forth.

18 What we would like to suggest is, if
19 possible, the policy in 32I be stated in terms of the
20 intent of Policy 32 overall, rather than in terms of
21 maximum use. If not, the term maximum use should be
22 defined and expanded to show its accomplishment of the
23 intent of Policy 32.

24 Policy 32I should contain a water or storage
25 marketing plan for the entire Snake River Basin, similar

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1 confusing because -- and let me tell you what I mean. If
2 the minimum flow at Milner is zero, then storage acquired
3 would have to be found between Milner and Swan Falls, if
4 you use the language that's there now.

5 It should also -- we should also remember
6 that the review of 32I would have to be done before 32J
7 would be implemented, just a progression there. It's not
8 spelled out that you would have to do that inventory of
9 available space, but it probably would have to go that
10 way.

11 It should also be clarified if new storage
12 would be built or existing storage would be obtained.
13 Also, how would you get the existing storage? Would the
14 Water Resources Board buy it and hold title to it? If
15 so, what funds would you use for that? Could the storage
16 be condemned for pur -- for purchase? In other words,
17 would you have to use eminent domain? Or would it be
18 expected that the storage would be donated? I kind of
19 doubt it, but just some questions on how you get it.

20 The question of water use priority and
21 authorized uses may become involved. Should the water be
22 purchased for augmentation or should it be used for
23 domestic purposes above? In other words, if you have to
24 buy storage above Milner to release to make the minimum
25 flows at Swan Falls, why not buy it and supply the use in

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1 the first place? If -- if you've got someone going to
2 take the water out above for a municipal supply, why not
3 have them buy that supply from the rental pool or from
4 that storage, rather than buying the storage and
5 releasing it to minimum flow at Swan Falls. Which use
6 would have the higher priority?

7 The last question is probably the biggest one
8 of all. Will ground water be part of the adjudication
9 process? The language in 32J indicates that it would.
10 Is the connection here indicative that all ground water
11 permits will be adjudicated, as well as surface rights?

12 With that, we're happy to be able to give you
13 our -- our ideas on the proposed changes in Policy 32.
14 The Bureau of Reclamation stands ready to cooperate in
15 any way that we can to help you implement that policy and
16 the Swan Falls agreement.

17 And with that, I'd answer any questions that
18 you might have.

19 CHAIRMAN GRAY: Mr. Williams?

20 MR. WILLIAMS: Have one question, John, on the
21 expansion of the water bank. I believe, if I recall
22 correctly, as we've been going across the state with
23 similar hearings, some of the individuals have testified
24 that there's some impediments, federal law impediments,
25 to that.

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1 MR. KEYS: Yes.

2 MR. WILLIAMS: Could you briefly discuss that and
3 what if anything could be done.

4 MR. KEYS: I can think of two. One is the
5 authorized use of water. That means that if we had water
6 in Palisades Reservoir, basically the authorizing
7 legislation limits the use of that water to the Minidoka
8 Project area. Now, that's a pretty big area, and we've
9 been able to shift the waters around without any problem
10 there.

11 I think the one that you're referring to,
12 that you've heard from the most, is the one brought about
13 by the Reclamation Reform Act of 1982. That says that
14 under the acreage limitation law, you couldn't use
15 federal water on lands that don't meet the acreage
16 limitation. There are a couple of ways that we have
17 explored to get around that, and a couple of those are in
18 our Washington office being reviewed for approval now.

19 I don't know the answer to that yet. But
20 that is one of the impediments that we're dealing with.

21 I think, probably, if we got into a change in
22 the rules in the water bank, that might be a bargaining
23 chip, maybe, from the State's side, to say hey, fix that
24 up and we can do something else.

25 MR. WILLIAMS: Thank you.

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1 CHAIRMAN GRAY: Mr. Shawver?

2 MR. SHAWVER: I think John covered most of my
3 questions in the last one. But are you in favor of
4 expanding the water bank to multi years --

5 MR. KEYS: Yes, sir.

6 MR. SHAWVER: -- if we were able to --

7 MR. KEYS: Yes, we are.

8 MR. SHAWVER: (Unintelligible.)

9 MR. KEYS: Yes.

10 MR. SHAWVER: Okay.

11 CHAIRMAN GRAY: Mr. Rydallch?

12 MR. RYDALCH: In relation to this water bank
13 expansion, will there be any difficulties in -- with the
14 Bureau, in letting the price increase to a market value
15 in that water bank? Are you still going to hold the line
16 if you can make the profit from water stored in federal
17 reservoirs?

18 MR. KEYS: Mr. Chairman, that's one we've dealt
19 with in very difficult straits with. I think, to a
20 certain degree, the price could rise. But I don't know
21 how much.

22 Basically, the reason I say that, most of our
23 projects are tied to repayment of the federal obligation.
24 And, of course, that's kind of what governs the price of
25 water from the rental pool now, plus **on administrative

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1 fee and so forth. The current mood of the administration
2 is that those prices could be expanded.

3 MR. RYDALCH: Another question. There's been some
4 interest, in my area, of fish and wildlife groups renting
5 water out of **rental pool and **keep it in the
6 reservoirs. Do you have any problems with that?

7 MR. KEYS: The problems that we have are mostly
8 authorization problems or -- or allocation of the
9 original water. Basically, right now, we're limited to
10 using that water on its federal authorized allocation.

11 Now, what I mean by that is, if the reservoir
12 was built 100 percent for irrigation, we wouldn't have
13 any problem renting the water for use for irrigation. We
14 would have to seek a change in our allocation and -- and
15 authorization to allow that. But we have talked with our
16 people and don't see a great problem.

17 Part of that hurdle was crossed when we --
18 when water was rented to the Idaho Power, out of the
19 rental pool, a couple of years ago.

20 CHAIRMAN GRAY: Mr. Kramer?

21 MR. KRAMER: Thank you, John, for your comments.
22 I don't have any.

23 CHAIRMAN GRAY: Mr. Keys, we'll have a Board
24 Meeting on March 1st. Might we ask you, or possibly one
25 of your officers, to briefly address the Board on some of

1 the federal constraints that the Bureau has in moving
 2 some of these waters around? Just a 15 minute thing.
 3 MR. KEYS: Sure.
 4 CHAIRMAN GRAY: Because I think it would enlighten
 5 us a lot if we -- if we knew some of those problems and
 6 were aware of them.
 7 I thank you very much for your excellent
 8 testimony, and if you come up with any of the answers to
 9 some of the questions you've raised, please let us know.
 10 MR. KEYS: Okay. March 1st, in Boise or in --
 11 CHAIRMAN GRAY: In Boise.
 12 MR. KEYS: In Boise.
 13 CHAIRMAN GRAY: Thank you very much.
 14 Ladies and gentlemen, before we go any
 15 farther, I'd like to say that the Water Resource Board
 16 will accept written testimony until February 22nd. That
 17 written testimony can be sent to the Idaho Water Resource
 18 Board, Statehouse, Boise, Idaho, zip 83720.
 19 The Board, now, would call Marjorie Hayes.
 20 MS. HAYES: I wonder -- I -- I'm giving my report
 21 in conjunction with Harold Miles, and I would like his to
 22 come first, if you don't mind. It establishes the -- the
 23 basis for mine.
 24 CHAIRMAN GRAY: Let the record show that Mr. Miles
 25 will precede Mrs. Hayes.

1 MS. HAYES: Thank you.
 2 CHAIRMAN GRAY: Harold, before you get started,
 3 I'd like to point out to you that I followed you into
 4 town today. And before the police get you, your left
 5 headlight is out.
 6 MR. MILES: Okay. When I go home, they'll
 7 probably both be out. (Unintelligible) -- for myself.
 8 Guess I better go back and get it.
 9 Here are two copies of the studies I refer
 10 to.
 11 CHAIRMAN GRAY: Very good.
 12 MR. MILES: Chairman Gray and members of the Idaho
 13 Water Resource Board, my name is Harold C. Miles, reside
 14 in Nampa, Idaho. Phone number is 466-4152.
 15 The Idaho Water Right Federation, Idaho
 16 Consumer Affairs, Inc., and the Golden Eagle Audubon
 17 Society -- Golden Eagle Audubon Chapter of the National
 18 Audubon Society desire to submit the following statement
 19 for the official record of the -- of these proceedings,
 20 and has authorized Mr. Harold C. Miles, of Nampa, Idaho,
 21 to do so.
 22 We cannot help but notice this Board has
 23 offered public input regarding the revision of Policy No.
 24 32 of the current Idaho State Water Plan by all affected
 25 and innocent groups, and parties resident in the state of

1 Idaho, as well as the opportunity to make their positions
 2 known.
 3 This is in marked contrast **the opportunity
 4 the public, especially the conservation groups and
 5 organizations representing utility ratepayers, had to
 6 make input relative to the nefarious agreement entered
 7 into by Idaho's Governor, Attorney General, and the
 8 Chairman of the Board of the Idaho Power Company.
 9 We both accept and oppose some of the
 10 proposed revisions and amendments of -- to Policy 32 of
 11 the Idaho State Water Plan that have been supplied to us.
 12 Policy 32, Snake River Basin. The narrative
 13 does not offer any scientific or logical basis for
 14 setting the average daily flow -- minimum flow at the
 15 U.S.G.S. gage at Murphy for 3,900 cfs from April 1st to
 16 October 31st, and 5,600 cfs from November 1st to March
 17 31st, and 4,750 at the Weiser gage, or 5,000 cfs at
 18 Johnson's Bar, or 13,000 cfs at Lime Point for 95 percent
 19 of the time, which is stated for -- that for Lime Point,
 20 reduced flows may be for the months of July, August, and
 21 September. And no support data in the November 1984
 22 special Swan Falls Agreement edition of Currents.
 23 So we have no choice but to take the position
 24 that these aforementioned minimum flows decisions were
 25 purely political and are arbitrary and capricious, also

1 could be in violation of prior court dec -- decrees and
 2 decisions. As such, we strongly oppose this agreement.
 3 This is not to say we would not support on
 4 agreement adequately protecting the fish and wildlife in
 5 the Snake River Basin and the hydro generating capacity
 6 of Idaho Power Company's generating plants if the water
 7 flows and cfs were set at the levels of the Snake River
 8 Stream Resource Maintenance Studies of 1975/1976, as
 9 outlined on page 45 of Policy 32, the current Idaho State
 10 Water Plan, as well as protecting the fish species from
 11 becoming threatened or endangered, with due consideration
 12 for the species of special concern now ranging in the
 13 Snake River, below Swan Falls Dam, as outlined in the
 14 Fisheries Management Plan, 1981/1985 of the Idaho
 15 Department of Fish and Game.
 16 Also, if sufficient water flows are
 17 maintained in the Snake River below Swan Falls to protect
 18 the waterfowl and upland game birds' habitat occupying
 19 the islands in the Snake River, some of which are part of
 20 the Deer Flat National Bird Refuge, from animal predation
 21 and human molestation and disturbance due to land bridges
 22 created by low water to these Snake River islands.
 23 We base our concerns on data published in the
 24 two above-mentioned studies and the River Basin Studies,
 25 Bureau of Sport Fisheries and Wildlife Streambed

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1 Topography near Snake River Islands, Guffy, Brown and
2 Riche, published in Boise in 1975. We respectfully
3 request the Board take judicial notice of these studies.

4 Policy No. 32A, water held in trust for the
5 State. We feel that the authority vested in the Director
6 could be awesome, if misused, especially when it comes to
7 determining whether or not an applicant has financial
8 resources to complete the work, which we assume would
9 mean to put new land under irrigation, which could
10 prevent speculation.

11 We are opposed to using water for land
12 speculation. But possibly, a small farmer might be
13 prevented from enlarging his farm should a more
14 prosperous and larger farmer want to develop the same
15 piece of unirrigated land.

16 Policy No. 32B, domestic, commercial,
17 municipal, industrial, DCMI. We have no problem with
18 this portion of the policy, since these uses use so
19 little Snake River or well water. In fact, we would
20 support an even larger amount than 150 cfs, if doing so
21 would not impair the Snake River fishery.

22 Policy No. 32C, agriculture. We have grave
23 problems with this section, and we feel a reduction of
24 Idaho Power Company's water rights for the Swan Falls Dam
25 10,000 cfs, by virtue of purchase of this dam with its

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1 domestic produced sugar on July 31, **1985 to the tune of
2 3.82 times the value of sugar on the open world market.

3 Furthermore, in light of the present gigantic
4 federal deficit, all Americans, whether they be engaged
5 in agriculture or not, should be content with making a
6 living, and a profit on their investment, by selling
7 their products on the open market. Thus, it makes
8 absolutely no economic sense to put more public lands, or
9 private dry lands, into production by way of irrigation
10 using Snake River water, or water from the Snake River
11 Plain aquifer, during a period of depressed agricultural
12 conditions.

13 Thus, it should be the policy of the Board to
14 protect the present family farmers from the economic
15 pressures which will be caused by more surplus farm crops
16 and much, much higher pump irrigation electrical rates.

17 And there is testimony on record now, at the
18 office of Idaho Public Utilities Commission, to the
19 effect that in -- an increase in electrical pumping rates
20 will have a severe financial impact on the profitability
21 of many, many farmers in Idaho Power Company's Idaho
22 territory. Nearly a quarter million ratepayers, who have
23 little or no vested interest in Idaho agricultural
24 enterprises, will be adversely **affected by increased
25 electrical rates from the time this legislation is

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1 decreed water right of April 2, 1907, from the
2 Trade Dollar Mining Company, and Idaho Power Company's
3 4,000 cfs water right granted on July 29, 1919, by the
4 State of Idaho, Water License No. 14362, is certainly not
5 in the pub -- best public interests of the vast majority
6 of southern Idahoans.

7 We respectfully call the Board's attention to
8 the fact that in 1984, six hundred and seven --
9

10 (End of Tape 1.)
11

12 MR. MILES: -- the ATP and the ACR programs for
13 feed -- feed grains alone. And the federal monetary
14 payment for Idaho in 1984 amounted to \$49,365,328 for
15 just these two programs. In addition, there were dairy
16 price supports and federal money spent in Idaho for
17 storing surplus dairy products. Also, federal money is
18 spent for the purpose of supporting the price of the
19 domestic sugar market over the world price of sugar.

20 To illustrate, according to the
21 January 31, 1985 issue of the Wall Street Journal, the
22 November price for domestic sugar was 21.45 cents a
23 pound. The price of October sugar on the world market
24 was 5.62 cents a pound, or 15.83 cents a pound less. In
25 other words, the American taxpayer was subsidizing

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1 implemented to eternity. See our Exhibit No. 8.

2 Policy 32D, hydropower. We certainly agree
3 that reducing the Snake River flow below 3,900 cfs in the
4 seven irrigation months, and 5,600 cfs in the remaining
5 five months of the year, is not in the public interest
6 and that hydropower use be recognized as a beneficial use
7 of water.

8 However, we very strongly disagree with the
9 premise that reducing the 8,400 cfs flows of Idaho Power
10 Company for the Swan Falls Dam to 3,900 cfs is in the
11 public interest.

12 Furthermore, we offer our Exhibits
13 No. 1 and 2 to support our position that the minimum flow
14 appropriate for any month of the year should not be set
15 lower than 6,065 cfs, as this is the average minimum
16 daily flow for 1961 through 1983. To pick out a single,
17 solitary day out of the entire time since water records
18 have been kept for Murphy, beginning in August, 1913, is
19 manifestly unfair.

20 It also substantiates the position of many,
21 including us, that irrigation pumpers were pumping water
22 from the Snake River for which they had no valid water
23 right, according to our (unintelligible) regarding the
24 1983 Idaho Supreme Court Decision No. 49, upholding
25 Idaho Power Company's water right for 8,400 cfs at

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1 Swan Falls.

2 In addition, we offer our Exhibit No. 23 as
3 showing that the average instantaneous flow of the Snake
4 at Murphy, for 1961 through 1984, on July the 1st, was
5 9,208 cfs, or 2.3 times the 3,900 cfs proposed during
6 this same period of time. Even the lowest instantaneous
7 flow, at any time of year, averaged from 1961 through
8 1983, was 5,616 cfs at Murphy, which is 1.44 times the
9 3,900 cfs proposed during the seven summer, or
10 irrigation, months and slightly over the proposed
11 5,600 cfs proposed for the other five months of the year.
12 See our Exhibit No. 6.

13 Policy 32E, navigation. We support the
14 premise that water sufficient for commercial and
15 recreational navigation be provided by minimum flows to
16 the Snake River. However, based on the fact that on
17 July 1, 1977, only 3,111 cfs would have entered
18 Brownlee Reservoir if the Snake River tributaries below
19 Swan Falls had comparable flows -- inflows into the Snake
20 as they did on July 1, 1977.

21 The boating and fishing on Brownlee Reservoir
22 will be severely impacted if the reservoir is drawn down
23 to generate electrical power. Also, under this
24 condition, we feel the Hells Canyon Recreational Area,
25 as well as the wild and scenic river reach of the

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1 for fish food production are as follows:

2 Swan Falls Dam to Bernard's Ferry, for all
3 months of the year, 5,500 cfs. Also, there is
4 White Sturgeon in the reach and this species is now one
5 of special concern to the Idaho Department of Fish and
6 Game. Hence, a drastic reduction to 3,900 cfs, or
7 1,600 cfs reduction, will undoubtedly place this species
8 on the threatened species list for this reach of the
9 Snake River.

10 Bernard's Ferry to Boise River Mouth, for all
11 months of the year, 5,100 cfs. This reach of this river
12 also contained White Sturgeon, which would become a
13 threatened species in this reach. In addition, the
14 reduced flows will make possible land bridges to the
15 islands in this reach. The same applies to the Swan
16 Falls to Bernard's Ferry reach, and the Canada geese and
17 other waterfowl, as well as upland game birds, will
18 suffer animal predation and human harassment and
19 disturbance.

20 Boise River Mouth to Payette River Mouth, for
21 all months of the year, 5,650 cfs. The waterfall --
22 waterfowl, upland game birds, and animal wildlife in this
23 reach, such as mink, beaver, and muskrat, will suffer
24 animal predation and human harassment and disturbance.
25 Payette River Mouth to Brownlee flowline, all

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1 Snake River, from Hells Canyon Dam to Lewiston, will be
2 severely impacted because the outflow of the Snake River
3 at Hells Canyon Dam, on July 29, 1977, was only
4 5,560 cfs, whereas the flow at Murphy was 5,790 cfs.
5 Thus, reducing the flow at Hells Canyon another 1,890
6 cfs, the difference between 5,790 and 3,900 cfs, will
7 not meet the 5,000 cfs minimum flow requirement at
8 Johnson's Bar.

9 Policy 32F, ago -- aquaculture. We realize
10 aquaculture is a growing industry in Idaho and this is
11 one reason we previously stated that the 150 cfs
12 additional for DCMJ use should be increased. However, we
13 believe that some control over the water quality of the
14 water discharged in the fish farms should be made.

15 Policy 32G, fish, wildlife, recreation. This
16 is a section of the changes in Policy 32 in which we are
17 in very strong disagreement with the proposed 3,900 cfs
18 minimum flow at Murphy. As previously stated, there is
19 no scientific evidence that 3,900 cfs will maintain the
20 fish and wildlife habitat in the reaches of the
21 Snake River below Swan Falls to Brownlee Reservoir. We
22 expressly call the board's attention to the 1975/1976
23 Snake River Stream Resource Management -- Maintenance
24 Flow Studies, pages 12 through 14, which state that the
25 minimum flow requirements for maintaining riverine flows

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1 months of the year, 5,850 cfs. Consequently, a reduction
2 in river flows of Murphy to 3,900 cfs will severely
3 impact the fish, wildlife, and waterfowl, as well as
4 upland game birds in this Snake River reach, as well.

5 The Board's attention is respectfully called
6 to the attention the Snake River has been known as a very
7 valuable fishing stream for nearly 100 years, and not the
8 least known fish is the White Sturgeon, which would **be
9 become threatened if these proposed reductions in the
10 Snake River flows take place. We are submitting our
11 Exhibit No. 3, which is an official list of Idaho's
12 record fish, as well as a narration regarding the
13 sturgeon story, by Marshall Edson, Exhibit No. 4, of two
14 pages, which will substantiate our statement. Also, we
15 are submitting a document of two pages, our Exhibit No.
16 5, two pages, which is a copy of a document submitted by
17 Director A. Kenneth Dunn to the January, 1984 meeting of
18 the Idaho Water Resource Board, which states at the
19 bottom of page one, quote, effect on fishery. Quote,
20 loss of nearly all the sturgeon habitat upstream from
21 Hells Canyon, end quote. In addition, in Item 6a, last
22 line, quote, 55.3 million capital and fixed O and M, plus
23 26.3 million fuel cost, plus 28 million hydropower
24 losses, minus three -- minus 43-8 million power plant
25 sales for new irrigation lands equal 65.8 million

1 increased cost of electricity.
 2 Therefore, the evidence is overwhelming that
 3 the proposed reduction in the Snake flow to 3,900 cfs at
 4 Murphy will have a devastating affect on the White
 5 Sturgeon, causing a loss of nearly all of its habitat,
 6 and will have a most serious financial impact on the
 7 ratepayers, all classes, of Idaho Power Company.

8 Does the Board desire to see an annual
 9 financial impact of 65.8 million increase on Idaho Power
 10 Company's ratepayers, including the irrigation class of
 11 Idaho Power Company's ratepayers? If not, then the
 12 minimum flow of the Snake River should be set much
 13 higher, at least to the minimum flows that save the
 14 sturgeon fishery. 5,525 cfs is the average of the flows
 15 required to maintain the food supply of the sturgeon,
 16 from Swan Falls to the mouth of the Brownlee Reservoir.

17 Policy 32H, water quality and pollution
 18 control. We do not agree that the use of water to
 19 provide pollution dilution is not a beneficial use of
 20 water. The chemical fertilizers used by farmers, which
 21 enter the return flows to the Snake and have a
 22 nonbeneficial effect on the water quality of the river,
 23 especially for domestic use, and there are some valid
 24 right withdrawals from the Snake River for domestic use
 25 on the Oregon side of the river.

1 In addition, the silt entering the Snake
 2 River, from the farmers along the Snake River, especially
 3 in the spring and low water years, is very pronounced.
 4 In fact, it is stated that before the Salmon Falls
 5 Hydrogenerating Projects were built, that there **were
 6 very few islands in the Snake River below Swan Falls --
 7 below Salmon Falls.

8 Policy 32I, new storage. We have no problem
 9 with this section as stated in our copy of the text.

10 Policy 32J, stored water for management
 11 purposes. We have no problem with this section as stated
 12 in our copy of the text.

13 We propose a new section, 32K. Idaho should
 14 do more to increase its share of the U.S. and world
 15 recreational and tourist market, noting especially the
 16 economic value of this market to the state of Idaho and
 17 the Snake River fishing, hunting, boating, camping, and
 18 even (unintelligible) watching are ever-increasing
 19 annually, which is a very beneficial economic multiplier
 20 to all Idaho.

21 An addendum policy -- proposed Policy 32K,
 22 problem -- program to protect, mitigate, and enhance fish
 23 and wildlife, in compliance with Section 4(a)(1) of
 24 Pacific Northwest Electrical Power Council's purposes and
 25 recommendation under the Act.

1 We propose that this new policy since a
 2 very large part of the anadromous fish runs of the
 3 Pacific Northwest, including Idaho, have been badly
 4 depleted. In fact, anadromous fish runs have been
 5 totally eliminated in the Snake River upstream from Idaho
 6 Power Company's Hells Canyon Dams.

7 Respectfully submitted, Idaho Wildlife
 8 Federation, Idaho Consumer Affairs, Inc., and the Golden
 9 Eagle Audubon Society.

10 Thank you, Mr. Chairman.

11 CHAIRMAN GRAY: Thank you, Mr. Miles.

12 Mr. Williams, questions?

13 MR. WILLIAMS: None.

14 MR. DUNN: None.

15 MR. RYDALCH: I have none.

16 MR. KRAMER: I have none.

17 CHAIRMAN GRAY: Thank you, Mr. Miles.

18 Now the Board would call Mrs. Hayes.

19 MS. HAYES: Gentlemen, I would like to thank you
 20 for the opportunity of appearing before you this
 21 afternoon. I'm speaking -- I'm Marjorie Geddes Hayes, at
 22 7440 Manorwood Drive, and I'm speaking to you on behalf
 23 of the consumer at this hearing.

24 My testimony is adjunct to that of
 25 Mr. Harold Miles, whose research has clearly demonstrated

1 the validity of Idaho Power's right to Swan Falls.

2 We do not feel that it is in the public
 3 interest for the 3,900 cfs to be established at
 4 Swan Falls from April 1st to October 31st, or the
 5 5,600 cfs from November 1st to March 31st. Our reason
 6 for this conclusion was established by my
 7 great-grandfather, William Geddes, and is on file in the
 8 Weber County Courthouse, in Utah. It is called the
 9 Geddes Law and pertains to first in line, last in use.

10 This law protects the first established water
 11 claims from the taking process by those who file at a
 12 later date above their claims. It is our contention that
 13 the Idaho Power Company has a valid right to the full
 14 6,065 cfs which has been established as the average,
 15 minimum daily discharge at the gaging station at Murphy.
 16 under this old, accepted Western law.

17 It is also, in our opinion, decidedly in the
 18 best interest of the general public for this right to be
 19 maintained for the protection of the healthy hydropower
 20 system at Brownlee. For without this hydro base, our
 21 rates will soar. This has been clearly established by
 22 the very fine study that was done by the University of
 23 Idaho's economists, Lyman and Hamilton, with which you're
 24 all familiar, and many others. The Corps of Army
 25 Engineers did a study that -- that, in essence, validates

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1 the Hamilton -- the Lyman Hamilton study.
 2 There is another excellent reason that this
 3 water right should not be aborted, which should be given
 4 your full attention before taking any action whatsoever.
 5 This is the exciting new concept that is being considered
 6 by the Bonneville Power Administration at this time.
 7 The Bonneville Power Administration, under
 8 Peter Johnson, Administrator, has presented us with a
 9 plan that will release preference power, this is the
 10 cheaper power, from BPA, to the industrial utilities.
 11 Idaho Power Company is one. This preference power will
 12 be used by the investor-owned utilities to meet their own
 13 firm loads.
 14 In other words, they would use the Bonneville
 15 power for us consumers, the irrigators, et cetera, whom
 16 they are now servicing. They will, then, be able to sell
 17 their own power to California on a firm contract basis.
 18 To protect the continuation of the cheap BPA
 19 power to the Idaho consumer, I have suggested that the
 20 firm power contract with California be of the same
 21 duration as the BPA preference power contracts with the
 22 investor-owned utilities.
 23 A condition of the exchange of power would be
 24 that the money realized from the firm -- firm contract
 25 sales to California, 5 cents to 9 cents a kilowatt hour,

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1 will be used to superinsulate every house and mobile home
 2 in the northwest. It is the opinion of the Idaho
 3 Consumer Affairs, Incorporated that this should be done
 4 free of charge, for the preference power that will be
 5 used to make this plan possible has already been
 6 purchased with the tax dollars used to build the
 7 generating resource.
 8 The insulation program will not only supply a
 9 source of new energy, it will do a good-neighbor turn for
 10 California, for they can then mothball they oil-fired
 11 plants and replace the lost energy with our clean,
 12 nonpolluting hydropower. In doing this, it can also
 13 revitalize our own economy.
 14 A report released by the Northwest
 15 Conservation Act Coalition shows the result of a study by
 16 the A. Bainbridge Island, Washington firm of H. Glen Sims
 17 and Associates. They show that over the lifetime of
 18 houses built in a ten-year study period, the region would
 19 increase its employment by more than 180,000 job years.
 20 Building the better insulated homes would
 21 provide more jobs than building thermal plants. So would
 22 production and sale of the products that go into the
 23 homes. The money saved by the homeowners, as spent for
 24 other purposes, would also generate more jobs, according
 25 to the study.

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1 This study estimates that the model homes
 2 built to conservation standards would save the region's
 3 ratepayers over \$1.26 billion, because the energy costs
 4 less to conserve than to produce. Bear in mind that this
 5 does not take into account what will be realized from the
 6 superinsulation of older homes, houses, and mobile homes,
 7 as is planned with the preference power from Bonneville
 8 Power Administration.
 9 A study is now underway at Hood River,
 10 Oregon, that will show the extent of the savings from
 11 this plan. Both frontal attacks to superinsulate old and
 12 future homes will give us the needed capital to pay for
 13 our schools, our social programs, our roads, our fire
 14 departments, and our service organizations, for the plan
 15 is to use materials purchased in the Pacific Northwest.
 16 To pursue this plan, we will need hydropower,
 17 for a California energy commissioner, whom I listened to
 18 at a meeting in Seattle, specifically requested
 19 hydropower, not thermal, for this exchange with the
 20 investor-owned utilities. It is, therefore, imperative
 21 that we do not jeopardize our hydro base with the passage
 22 of the Swan Falls Agreement and diminish our prospects to
 23 bring scarce capital into a region that is struggling, at
 24 the legislature, to make too little capital go too far.
 25 I thank you.

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1 CHAIRMAN GRAY: Mr. Williams, any questions?
 2 MR. WILLIAMS: No.
 3 CHAIRMAN GRAY: Mr. Dunn?
 4 MR. DUNN: No.
 5 CHAIRMAN GRAY: Mr. Rydallch?
 6 MR. RYDALCH: I have none.
 7 CHAIRMAN GRAY: Mr. Kramer?
 8 MR. KRAMER: I have none.
 9 CHAIRMAN GRAY: The Board calls Stanley
 10 (unintelligible.)
 11
 12 (Gap in the recording.)
 13
 14 CHAIRMAN GRAY: The Board would call
 15 Jack Streeter.
 16 MR. STREETER: Gentlemen of the Idaho Water
 17 Resources Board, my name is Jack Streeter, from
 18 Mountain Home, Idaho. I represent the Southwest Idaho
 19 Development Association, the Sagebrush Rebellion, and my
 20 grandkids, and their grandkids. And I'm here to speak to
 21 the proposition that water in Idaho has got to be handled
 22 in a manner that it will be available for our posterity,
 23 for all types of uses.
 24 It is appalling when you can see, on the TV
 25 every day, that millions upon millions of people are

1 starving to death. Farmers are going broke every day.
 2 We experienced a spiral in inflation here, where land
 3 went from 2 to 4 to 6 to 12 to \$2,400 an acre. Bankers
 4 lent money on the spiral of inflation. And, now, we're
 5 going through a depression, or a deflation and this
 6 ground is going out of production. Now, that would leave
 7 you to believe that maybe we should give our water away,
 8 but that is definitely wrong.

9 There will come a time, and there are energy
 10 sources available today, to make some of these things
 11 more feasible, and they will become more feasible when
 12 the demand exists.

13 The farmer used to buy fuel at 21 cents, a
 14 good tractor for 15,000, and he used to sell his crops at
 15 a profit. I used to pay \$18 for lifting water, that now
 16 costs about \$60.

17 The utilization of all energy sources have
 18 to be considered. We have the technology, today, to
 19 help us **do this in lots of manners. First of all, the
 20 Pacific Northwest, the West in general, and Idaho most
 21 particularly, is remiss in the development of
 22 hydroelectric energy and upstream storage for generations
 23 that will need it. And that will come a lot faster than
 24 you think. We should be planning for that.

25 I feel that Idaho Power has a right to a fair

1 easily available, where you take coal and make it almost
 2 like a face powder and put a low-grade crude on it, to
 3 put it into a blast furnace, it's amazing the BTUs you
 4 can get from that energy.

5 Our energy crisis is somewhat put-on, as we
 6 all have begin to realize. I'm here to lobby, and I'll
 7 be frank about it, in the best interests of the people of
 8 Idaho, to save Idaho's water and its electrical
 9 generation for use and development here. And to that
 10 end, I have dedicated a great amount of my time and
 11 energy. And I feel that you gentlemen must be very wary,
 12 when you go in with your plan, to see that you don't lose
 13 part of it, and you ought to fight for more of it. And
 14 I'm on your side, but I think you should have had a
 15 bigger hunk to start with. Thank you very much.

16 May I invite you the 20th Annual Meeting of
 17 the Southwest Idaho Development Association, where we
 18 will discuss off-stream storage, energy, and energy
 19 alternatives. It's all coupled together, gentlemen, and
 20 we'd like to see you there.

21 CHAIRMAN GRAY: Any questions of Mr. Streeter?

22 MR. WILLIAMS: I have none.

23 CHAIRMAN GRAY: Mr. Rydalch?

24 MR. RYDALCH: I have none.

25 CHAIRMAN GRAY: Mr. Kramer?

1 share of water. But, in my opinion, it is a use right
 2 and not a consumptive right. I feel sure that the only
 3 reason we have been able, with the help of you gentlemen,
 4 to hammer out some sort of a compromise is because that
 5 Idaho Power knows that the old mining contract that they
 6 had for the water right is pretty shaky. And I'm sure
 7 their lawyers have told them, if you take it to the
 8 highest court of the land, you will lose.

9 So this compromise is definitely in their
 10 best interest, and not necessarily in the best interest
 11 of the people. You and I both know that when your plan
 12 goes in front of this legislature, the lobbyists will
 13 chip away at it just as hard as they can. And what
 14 lobbyists am I talking about? Idaho Power's lobbyists.

15 I want to give you this, and I hope you will
 16 put it in your records, to show you that there are energy
 17 sources available. That little piece of paper come from
 18 a restricted government report that's about 27 pages
 19 long. And here, in Idaho, we have hot water that is
 20 superheated steam. It would run an awful lot of
 21 generators, and Idaho Power is trying to break the law
 22 where they have to buy generation, brought to their lines
 23 by individuals.

24 If we would slurry coal -- and there's
 25 several ways to do that -- and it's here in the west,

1 MR. KRAMER: I have none.

2 MR. STREETER: Thank you very much.

3 CHAIRMAN GRAY: The Board would call Fred Stewart.

4 MR. STEWART: May I approach the Chair?

5 CHAIRMAN GRAY: Yes, you certainly can.

6 MR. STEWART: Mr. Chairman, I thought you folks
 7 were going to utilize the -- (this issue of the Currents.
 8 I see you're using the January issue. I wonder if you
 9 could pass one of those out to each.

10 CHAIRMAN GRAY: Most certainly.

11 MR. STEWART: That has the contract in it, as well
 12 as the agreement.

13 CHAIRMAN GRAY: And let the record show that
 14 Mr. Stewart has given the Board a copy of Currents,
 15 November, 1984 issue.

16 MR. STEWART: And then I gave you two handouts.
 17 And, Mr. Chairman, I had another one, but I don't have it
 18 copied for each one. So if I could give it to you, it's
 19 a three-page handout. I don't have enough for each one;
 20 I thought I did, but I don't.

21 CHAIRMAN GRAY: Thank you. The Board has received
 22 a copy of Idaho Code, Paragraph 42-245, which is
 23 underlined; 42-247, which has notations; and a letter to
 24 Fred Stewart, from David R. Tuhill, Supervisor, Water
 25 Allocation Section, Department of Water Resources, dated

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1 January 31, 1985.

2 MR. STEWART: Mr. Chairman, members of the Board,
3 my name is Fred Stewart. I live on the Hunt Project,
4 north of Eden, a few miles north of the member,
5 Mr. Shawver, there.

6 I hope you'll forgive me for my cold, as at
7 night I can wear my nightcap that my wife makes, in the
8 daytime I can wear a cap, but I -- when you come in a
9 drafty building, I'm going to have to adopt Jim's formula
10 for keeping my head warm.

11 By god, it's real rough. So, I've really had
12 a terrible head cold.

13 CHAIRMAN GRAY: May the record show Mr. Shawver is
14 blushing.

15 MR. STEWART: I wasn't aware of that. I
16 complimented Jim that he looked a lot younger than his
17 father did in the picture, here, a couple weeks ago, and
18 wondering how he kept looking so young.

19 And he says, well, you can purchase any --
20 any look you want. So I'm gonna look for his same -- the
21 same vendor. If I can get rid of the glasses, and put
22 one of them on, and get some false teeth, maybe I could
23 appear to be 20 years younger. I don't know.

24 MR. SHAWVER: Well, could we get to Policy 32,
25 Mr. Stewart?

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1 MR. STEWART: All right. As -- as a -- a little
2 background, gentlemen, as I know up at the State Capitol
3 here, they place a lot of stress on papers on the wall
4 saying what kind of lawyer, or this or that or the other.

5 My education is engineering training, civil
6 and agricultural. I was a classmate of
7 Professor Cal Warnick. I've made a fairly good success
8 in farming. Also, I'm a -- a real estate broker. I have
9 my own real estate brokerage, international real estate
10 brokerage. So, I'm quite able to handle contracts and
11 things.

12 As the -- the hand out that I gave you there
13 is also the first page of the handout that I handed the
14 Chairman ahead of time. And it has to do with -- with
15 Policy No. 70, the adjudication, which is all part of the
16 package.

17 If I understand -- is this limited to your
18 Policy 32?

19 CHAIRMAN GRAY: We would prefer, Mr. Stewart.

20 MR. STEWART: Yeah. I think it's interwoven here,
21 to this extent.

22 CHAIRMAN GRAY: If you can tie it to Policy 32,
23 that'd be fine.

24 MR. STEWART: I tie it to the -- the agreement and
25 the contract, and then back to Policy 32. And I think --

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1 I think it's something that has to be addressed, real
2 quickly, because, as it states here -- and it's codified
3 42-245 is failure to file claims and relinquish right by
4 June the 30th of this year. You're going to have 20,
5 24,000 people that's gonna be sitting out there in the
6 cold, unless something is done there.

7 (Unintelligible) assured me, here, three
8 weeks ago today, that they'd do something about that.
9 They have done something to help alleviate that. Now,
10 the figure I got there is from the third page of that
11 handout that I've given you, Mr. Chairman. It's to
12 myself, from Mr. Tutbill, there, in response to my
13 request. And I'd like to read it to the rest of the
14 Board.

15 It says, pursuant to your request, I've
16 tabulated a number of claims to water rights received
17 since Idaho Water Claims program began on July 1, 1978.
18 The number received between that date and
19 December 31, 1984 is 8,942. This compares with an
20 estimate of 34,000 claimed water rights computed to be
21 required statewide.

22 Now, the second page there is taken out of
23 the State Water Plan, 1976, there alludes to 250,000
24 water rights, which also includes the domestic. Now,
25 the -- the provision there of domestic is a single family

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1 dwelling and a half acre. And so, how many you got
2 between the 34,000 and the 200,000, probably be a lot,
3 yes, by anybody.

4 But in any event, gee, this is a real serious
5 matter that really has to be there. You're gonna have
6 30 -- 25,000 people that could all of a sudden -- or will
7 be chopped off. Because when adjudication starts,
8 they'll start with the recorded water rights. And -- and
9 so, certainly, it hasn't been a success. Because of
10 34,000, you've only had that many people.

11 But -- and so that -- that addresses your
12 adjud -- your adjudication part of it, which is your 70
13 and 71.

14 Now, in response to my comments at a
15 Water Resource meeting two weeks ago, and they brought in
16 bill -- House Bill 71, which allows for expansion and
17 which would meet some of those. And what I warned the
18 people there, all the irrigators there, is that some of
19 the people maybe had 80 acres, with 80 shares of water,
20 and another 50 shares -- or another 50 acres adjoining of
21 dry ground, and they had put a sprinkler on. So they had
22 expanded their right, but they hadn't recorded it.

23 So the following Monday, Pat Kole and Pat
24 Costello had -- had Bill 71 there, before the House
25 Resource Committee. And I think it's a good bill,

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1 because it allows for expansion on these rights. But I
2 think that they should also have a bill in there that
3 allows, somehow -- now, the State Water Board, this is
4 how the State Water Board -- State Water Plan, the
5 verbiage was.

6 Now, in the correction that the House
7 Concurrent Bill 48 gave it, it gave some -- some relief
8 in there, so that a person would not be cut out. And --
9 and something has got to be done, or we're going to chaos
10 in the state come the first of July.

11 But the drop back there to the other -- to my
12 handout there, gentlemen, is a -- there is -- insofar as
13 the agreement is, I would -- made it as clear as I could
14 in there. And you can pursue (sic) my written statement,
15 there, at your leisure, as it -- that I think this
16 agreement should be scraped, because it would tend to
17 allow the exportation of every drop of the Snake --
18 Snake River water above the Hells Canyon reach.

19 And -- and you have to pursue, through the
20 State Water Plan, the Swan Falls one, the House
21 Concurrent Resolution 48, and the contract and the
22 agreement. It's like you walk into a friend's house and
23 the kids are on the floor. If they've got a thousand
24 piece jigsaw puzzle, and you look at that forever and not
25 see it unless it's put together. And that's -- but it's

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1 real simple.

2 And I've got -- in this handout, I've got a
3 little plat here. It's -- has a map showing the hydro --
4 the hydro plants of Idaho Power. The three -- the three
5 lower dams are subordinated, and there I'd like to refer
6 to the single-page handout that I -- that I gave each one
7 of the Board members.

8 And that's a -- the final, conclusionary
9 remark of Justice Shepherd -- that's the single-page
10 handout, gentlemen -- in Swan Falls I. And he's gone on
11 for several -- several pages in this opinion there, to
12 point out that the FPC, along with the State, that
13 insisted on subordination of these three lower dams.

14 Now, in his conclusionary, he's speaking
15 about utilities oversee of these lower dams. And I've
16 underlined there. It says, with respect to the status
17 requiring Public Utilities Commission approval of
18 transfer of utility property, we hold that the statutes
19 do not apply to water right subordinated when acquired,
20 not do they apply to water rights which have been
21 abandoned or forfeited.

22 Now, that's -- that's your three lower dams
23 down there. That's -- that's the -- over three-quarters
24 of their hydrogeneration, 1,340,000 Kw. All the other
25 hydro plants comes to 446,000 Kw. Now, by the terms of

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1 the agreement, all them plants, including Swan Falls and
2 up above, will be unsubordinated. That's part of the
3 agreement, the works in there already to unsubordinate
4 C.J. Striker, in particular, in Twin Falls.

5 There's a -- in Senate Bill 1005 -- do -- you
6 gentlemen don't have a -- I've been working with the
7 legislature, so I refer more to the bills that's
8 implementing these policies there. 1005 is the -- the
9 bill that -- that is before the Senate right now, that
10 says we, the legislature, approve of the contract, which
11 the contract then approves the agreement. Once that's --
12 once that's approved, then this thing is locked in.

13 The second part of 1005 refers to the Public
14 Utilities Commission's jurisdiction. That's speaking of
15 their jurisdiction from -- from Swan Falls up. Now,
16 you've just read where they have no jurisdiction. No
17 utility will have any jurisdiction at Brownlee Dam.
18 That's -- that's the conclusionary statement of
19 Justice Shepherd.

20 Now, the Public Utility Commission, the Idaho
21 Public Utility Commission, will also not have any
22 jurisdiction from Swan Falls up. It's part of this
23 agreement. The -- the agreement said that they had --
24 the Public Utilities Commission would either do it
25 voluntarily, or they'd be directed to by the utilities.

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1 This bottom part of your 1005, as -- is addressing that,
2 is taking their jurisdiction away from Idaho Power.

3 Now, your Bill 1008 is your Policy 32, in --
4 in the bill form. You know, you make these policies --
5 and I've seen that over the years, the policies in the
6 State Water -- the Board has made. And then -- then they
7 goes to the legislature, and -- and they verbalize it,
8 sometimes the meaning changes in there.

9 But over on page -- on section -- Section 2,
10 it says the legislature finds and declares that it is in
11 the public interest to specifically implement the State's
12 power to regulate and limit the use of water for power
13 purposes. Now, that does not apply to Idaho Power. That
14 does not apply to Idaho Power.

15 Idaho Power submitted to the -- a statement
16 to the Senate Resource and Environment Committee, on
17 January the 25th, and that's what they say. That
18 Idaho Power Company is not required, by the Swan Falls
19 Agreement, to support Section 2 of Senate Bill 1008,
20 found on that page that I just read.

21 Their rights are unsubordinated with the
22 implementation of 1005, and they don't have any --
23 anybody saying hey, you've got to do like you've done
24 for, you might say, for John Peavey, to protect their
25 hydroflow.

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1 Now, in your agreement, if you can turn to
2 your agreement there. It's found on either -- either --
3 either -- either issue of the Current there. It's --
4 it's under the Swan Falls Agreement, it's under paragraph
5 6(e). You can find it in either paper there, the
6 Agreement. And that's at the bottom of the second
7 column, 6(e) -- or 7(e). Pardon me, gentlemen, 7(e).

8 It says, company's ability to purchase,
9 lease, own or otherwise acquire water from sources
10 upstream of its power plants, and convey it to and past
11 its power plants below Milner Dam shall not be limited by
12 this agreement. Such flows shall be considered
13 fluctuation resulting from operation of Company
14 facilities.

15 Then drop back up to the bottom of 7(b), the
16 last paragraph there, or the last sentence there, next to
17 the last. It says, any fluctuations resulting from the
18 operation of Company facilities shall not be considered
19 in the calculation of the minimum daily streamflows set
20 forth herein.

21 And what this does, gentlemen, is it opens
22 the door to taking every drop of Idaho's water out of the
23 Snake River Basin above Hells Canyon. In my handout,
24 there is a copy of what's known as a Modified Snake
25 Colorado Plan to convey water from the backwaters of the

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1 Lawrence Welk up to --

3 (End of Tape 2.)

5 MR. STEWART: The water goes south and passes the
6 Owyhee Reservoir. In their plans, they have that they
7 can build ahead of the Owyhee Reservoir (unintelligible)
8 store 24 million acre-feet of water. Go right down past
9 the (unintelligible) plant, which comes on line, which, I
10 submit to you, was built specifically for this. It --
11 it's really that simple, gentlemen. It's really that
12 simple.

13 Now, in 1964, as Governor Smylie and the
14 whole -- the whole state recognized the danger, and
15 that's why they created this Board that's before me
16 today. And they charged them to protect Idaho water.

17 Now, when the Plan came out in 1976, the
18 legislature reviewed it. And I don't point any fingers
19 at anybody. That's a tremendous good work. There's a
20 lot of work done in it. I -- I study it all the time.

21 But the legislature recognized that there was
22 certain dangers in that. But they created Policy 11,
23 which is a willing buyer/willing seller. And so, the
24 legislature passed HB 14, that gave the legislature
25 overview, and -- and they took the whole legislative

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1 Brownlee, down to Owens Valley, and also into Lake Meade.
2 It gives the hydrology on it. And they've got a Bill
3 before the Congress, right now, to terminate the last
4 four years of the Church 40-year moratorium.

5 '77, they sent to the legislature,
6 California did, a resolution to attach the Snake River
7 now. It is -- the Central Arizona Project is going to be
8 completed next year. At that time, Arizona is going to
9 take half of California's adjudicated right in the
10 Colorado. They have an empty tube at Owens Valley.

11 As you know, at the turn of the century, they
12 devastated Owens Valley and took all the water out of the
13 valley, the surface water. And 15 years ago, they poked
14 another hole through and drilled a whole series of wells
15 up and down the valley and -- and sucked the subwater
16 out. And, in doing so, they started killing a lot of the
17 vegetation on the surrounding public ground. And so the
18 Sierra Club stopped them. So they got an empty tube
19 there.

20 The large group of people, a consortium,
21 that got the water out of Owens River Valley now own
22 99 percent of all the valley. It's become a vacation
23 mecca. If they could replace that water, it'd be worth
24 multi-billions to them. You're talking money down there.
25 Neighbor of mine, his brother is down the road from

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1 session of 1978 to overview this. Then they had a
2 concurrent resolution. I was there the day that both --
3 both of the houses met. And they appointed a
4 subcommittee on -- on every one of these policies.

5 And, if I remember right, Lawrence Knigge had
6 Policy 11. And they inserted in that, as long as it does
7 not adversely affect another water user and as long as it
8 does not go out of the state.

9 CHAIRMAN GRAY: Now, Fred, can you tie all this in
10 to Policy 32, which is --

11 MR. STEWART: Well, I -- I think it all ties
12 together, because --

13 CHAIRMAN GRAY: Can you bring it into a point?

14 MR. STEWART: I just haven't been able to appear
15 before this Board. And the -- the thing is, now, your
16 Policy 32 is -- is coming -- is before the -- for the
17 third reading, tomorrow. At least they had the second
18 reading today, before the Senate, of the 1008.

19 Now, I would suggest, in fact I'd request,
20 that you contact the legislature to -- to hold back the
21 third reading on policy 1005 and 1008 until after you
22 people can give your report to them. And it looks to me
23 like they're getting ahead of you. In other words,
24 you're getting a lot of input on Policy 32, which is
25 their Bill 1008, and they're -- they're going ahead

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1 without the input that you folks might have well give
2 them on this.
3 And -- and so this -- this whole thing has to
4 tie together in -- in that. And there's been a lot of
5 wonderful work done that's -- is -- these people whose
6 done that and all the supporting deal. Now, the -- the
7 agreement says that all the exhibits should be completed
8 to implement, and if not, terminate.

9 But also, it does say that on May 15th, the
10 two parties will get together, and I submit to you,
11 perhaps none of them are. That if 1005, which says the
12 legislature hereby finds if (unintelligible) portions of
13 the testimony differ, the contract entered into by the
14 Governor and Idaho Power Company on October 25, 1984, is
15 in the public interest of all purposes, including, and
16 then it goes on about the jurisdiction of the -- there.

17 And so, this is what we're faced with,
18 gentlemen, is -- is that, if the vehicle's there, if the
19 desire's there for the water, and it obviously is, do
20 they have the power to get it? They've certainly got the
21 most power in the nation today, maybe of any power that's
22 ever been in the world. They've certainly got the money
23 down there.

24 And the one thing they lack -- you know,
25 desert ground without water is almost valueless, and with

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1 water down in that country, and between Arizona and
2 Southern California, they can lose ever drop of the
3 Snake River water. And -- and if anybody can show me how
4 you -- once this thing is implemented, how you can stop
5 them.

6 They got the Owens River water by buying up
7 mortgages ahead of time, before they ever -- anybody
8 knew. And Reno only spent -- you know, we all know how
9 you know, you put an ad in the paper right now and -- and
10 offer 75 cents on the dollar on a lot of mortgage
11 contracts, I submit you're gonna have your door broke
12 down. And who knows, see. That's exactly how they
13 obtained that, is -- is, we can face catastrophe -- is
14 they want the water. If anybody can show me any way you
15 can prevent them, if this is implemented, I've asked
16 anybody and nobody can.

17 So, I guess that's the sum and substance,
18 gentlemen. I think these bills ought to be held up in
19 the House until you people have it, until these things
20 can be -- I think we've been mesmerized on this whole
21 thing. We had a lawsuit, and I was recipient of four of
22 them, four of them, as a defendant. And -- and I begged
23 the Governor not to sign this, and I begged Jim Jones --
24 I've -- I've seen Jim grow up. Jim can testify to that.
25 Known him all his life, known his father -- is -- is not

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1 to sign that thing, to let me appear in court.

2 Because Idaho Power didn't have a license
3 until December of 1982. Their license expired in 1970,
4 and all my permits were prior to that. So, the
5 proponents -- in fact, I'd say over 95 percent of them,
6 should never have been enjoined. And just consider what
7 that's cost the people of the state of Idaho.

8 I submit that not one of those defendants
9 have got by for less than \$200. So if they've dismissed
10 5,000 -- I don't know how many they had. They said 75 to
11 begin with, and as you hold the two deals up, you -- you
12 certainly got the most of them dismissed. Well, just
13 5,000 times 200, that's a million dollars that this
14 company has cost, plus all the meetings and everything
15 that's happened. Just the time a person spent. And they
16 never should have been enjoined. This is to create this
17 terrible turmoil in the state, the -- the consumptive use
18 against the power usage.

19 I've never taken a stand whether there should
20 be so much for hydroflow for cheap power generation, or
21 so much more ground go under. My stand has always been,
22 let's save our water for Idaho. Then decide, within our
23 own family, who gets what. But the way this thing is
24 going, they're not going to get their cheap hydroflow,
25 because when that water heads out in that 4,750 -- now,

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1 nobody's made any motion to change the minimum streamflow
2 at Weiser. It's 4,750. You can raise your minimum flow
3 and that doesn't bother anybody, because whoever set the
4 3,300 was underestimating. Maybe it should be 39. I
5 have no problem with that.

6 But what I do have a problem with, they can
7 do exactly as they did in Owens Valley, and it's the same
8 people, or their sons, doing it. The very same few,
9 25 corporations, in California, have 68 percent of all
10 the irrigation, 25. And that's a huge power, gentlemen.
11 And that's what we're facing.

12 Now, everybody got excited back in 1964 about
13 our water going to California. And now, here the
14 implemen -- the way to implement it going is here, and
15 nobody's getting excited, gentlemen. We can -- we can
16 absolutely devastate this state, if we don't stop this
17 thing.

18 CHAIRMAN GRAY: Any questions of Mr. Stewart?

19 Mr. Williams?

20 MR. WILLIAMS: None.

21 CHAIRMAN GRAY: Mr. Shawver?

22 MR. SHAWVER: None.

23 CHAIRMAN GRAY: Mr. Rydall?

24 MR. RYDALCH: None.

25 CHAIRMAN GRAY: Mr. Kramer?

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1 MR. KRAMER: None.
2 CHAIRMAN GRAY: Thank you.
3 MR. STEWART: Thank you.
4 CHAIRMAN GRAY: We will adjourn until 7:00 p.m.
5 this evening.

6
7 * * * * *

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1 UNKNOWN SPEAKER: (Unintelligible) traveling.
2 UNKNOWN SPEAKER: We had a great afternoon --
3 CHAIRMAN GRAY: Cedric, you should have been here
4 this afternoon. It was wall to wall.
5 UNKNOWN SPEAKER: I wish you would, because I
6 understand (unintelligible) has cut out my supplemental
7 request to cover these.
8 CHAIRMAN GRAY: However, we understand -- we
9 understand, Mr. Director, that there are other monies,
10 and we'll be talking to you about that later.
11 Mr. Nelson.
12 MR. NELSON: Mr. Chairman, members of the Board,
13 my name is Thomas G. Nelson, from Twin Falls. I'm here
14 on behalf of Idaho Power Company, one of the signatories
15 to the agreement of October 25, 1984.
16 I think there are a couple of things that
17 should be said, for the record, in view of some of the
18 comments that have been made before the Board on -- in
19 previous hearings.
20 As the Governor said, this agreement was
21 arrived at between the State and the Idaho Power Company.
22 It's an attempt to -- to resolve certain pending
23 litigation. That pending litigation can be resolved only
24 by certain adjustments in State policy. But also, that
25 the parties were negotiating that settlement. Therefore,

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1 CHAIRMAN GRAY: Gentlemen, I'd like to welcome you
2 to the 10th of 12 meetings being held by the Idaho Water
3 Resource Board, and we'll be considering revisions to
4 Policy 32 of the Idaho State Water Plan.
5 And for those of you who don't know, to my
6 immediate left is J.D. Williams, of Preston, Idaho. An
7 attorney and mayor of the city of Preston. Jim Shawver,
8 farmer and -- from Eden, and secretary of the Idaho
9 Resource Board. On my immediate right is Dave Rydatch,
10 member of the committee tonight and a farmer from
11 St. Anthony. And Don Kramer, immediate past chairman of
12 the Idaho Water Resource Board. And Wayne Haas,
13 Department of Water Resources.
14 We have kind of a light meeting tonight, and
15 it's sort of like talking to my mother. What we will do
16 is, we'll be taking testimony on Policy 32, and I
17 understand we do have two people who wish to testify this
18 evening. And so, with that, we'll open the testimony.
19 We would call who, Tom Nelson?
20 UNKNOWN SPEAKER: The other's a zero,
21 Mr. Chairman.
22 CHAIRMAN GRAY: And that's it? It's a heck of a
23 deal for the Chairman of the Resource and Environment
24 Committee to be witnessing such few folks, but we're
25 gonna give you the full show.

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1 this view of State policy is a little narrower, perhaps,
2 than it might otherwise be.
3 As far as the minimum flow itself is
4 concerned, I believe in -- in earlier meetings we've
5 discussed how that was arrived at. But I would like to
6 say, for the record, what that flow is and what it isn't.
7 You heard some discussions today about
8 averages. The State Water Plan is now couched in terms
9 of an average daily flow. The proposed amendments that
10 are before you are also couched in terms of an average
11 daily flow.
12 What we have done is put the State in a
13 position to have a different planning number to -- to
14 shoot for in -- in allowing new permits and allowing new
15 development. This is now the new target.
16 So I suggest to you, given -- given what
17 you've said in your previous plan, and the way that it
18 physically worked, this is really two things. It's both
19 the flow and it's an enforcement mechanism.
20 Because if you'll recall, when that number
21 was chosen, the 3,300 cfs at Murphy in 1976, the Board
22 acknowledged that there were -- that number was chosen
23 because you had existing permits outstanding, at that
24 time, which would reduce the flow to that level if they
25 all developed. Well, we've had a great deal of

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1 development since 1976, and at no time has the Water Plan
2 Minimum at the Murphy gage been a factor in what happened
3 to any of those applications.

4 This agreement, if implemented, now puts the
5 State in a position where it has to recognize that
6 minimum flow as a part of its planning process. Not only
7 has to plan for it, but has to take steps to implement
8 it. So I think what we've really done is put some teeth
9 in the State Water Plan. And I'm not being critical of
10 the Board for not having done that before, because that
11 really wasn't your function. And I'm not critical of the
12 Department, because it didn't really have the tools to do
13 it.

14 But now I think that -- that we have the
15 tools to -- to make the State Water Plan really work to
16 the level selected, and I commend the 3,900 to you. If
17 you look at it in a vacuum, I think it can be argued it's
18 inadequate from one side, or you can argue it's too high
19 from the other side. I think -- I think it's a
20 relatively realistic number, both physically and
21 politically.

22 I don't think a number that's based on an
23 absolute freezing of further development in this state is
24 ever going to fly. I think people who want that, who
25 think that -- that they can sell an absolute freeze on

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1 Governor and the Attorney General, have been consistently
2 in support of the agreement, as written, and so has the
3 Idaho Power Company. So I suggest that that paranoia is
4 badly misplaced. That without the good faith support of
5 the parties, I don't think we would be as far as we are
6 in the legislature, and probably wouldn't have a - a
7 chance of getting it passed. So the parties have arrived
8 at the agreement. To my knowledge, they are -- are in
9 total good faith in trying to get it implemented.

10 With that, Mr. Chairman, if you have any
11 questions, I'd be delighted to try to answer them.

12 CHAIRMAN GRAY: Thank you, Mr. Nelson.

13 Mr. Williams?

14 MR. WILLIAMS: Mr. Chairman.

15 Mr. Nelson, I'm intrigued by this term
16 average daily flow from April 1st to October 31st. Now
17 average, does that mean that whole period, you average
18 the number of days and the water flows, you have to come
19 to 39 or is 3,900 a minimum flow on any one day during
20 that period? Because if you average it, couldn't some
21 days you could be considerably lower than that, if it's
22 compensated for by days that have a higher flow?

23 MR. NELSON: Mr. Chairman, my understanding -- and
24 we have some technical people here -- but as explained to
25 me by the G.S., the way they use average daily flow is,

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1 further development should go try and sell it. But I
2 don't think the way to do that is to kick this agreement
3 in the head by rejecting it and going back to war in the
4 courts, because I'm not sure you're going to end up with
5 an absolute freeze on further development as a result of
6 any court action that you can file.

7 The other comment I would make would be
8 relative to good faith. And there was a comment made
9 this afternoon that you need to -- you need to put your
10 paranoid hat on, because the Idaho Power Company's going
11 to be over at the legislator -- legislature chipping away
12 at everything you do here relative to the State Water
13 Plan.

14 I'd like to refer you to paragraph 4 of the
15 October agreement. The bullet, or caption, is entitled
16 Good Faith. And the second paragraph says, the State
17 shall enforce the State Water Plan and shall assert the
18 existence of water rights held in trust by the State and
19 that the Snake River is fully appropriated as needed to
20 enforce the State Water Plan. State and Company shall
21 not take any position before the legislature or any
22 court, board, or agency which is inconsistent with the
23 term of this agreement.

24 And so far as I know, and I think I'm in a
25 position to know, the State of Idaho, through the

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1 take for example, you had a gage where you read it every
2 hour; all right? So you would go down and you would have
3 a reading every hour and you would average those 24
4 flows, and that would be the average --

5 MR. WILLIAMS: For that.

6 MR. NELSON: -- daily flow.

7 MR. WILLIAMS: Okay. So it is --

8 MR. NELSON: And -- but it's within that day.

9 Now, the average -- or the lowest instantaneous flow
10 at -- at the Murphy gage, by way of example, I think is
11 in the area of 3,600, whereas the lowest average daily
12 flow is 4,500.

13 MR. WILLIAMS: I see.

14 MR. NELSON: See --

15 MR. WILLIAMS: By average all the measurements for
16 that particular day?

17 MR. NELSON: Yeah. That's my understanding of the
18 way the G.S. uses average daily flow, as the Board has
19 used it in the Water Plan.

20 MR. WILLIAMS: Some of those fluctuations may be
21 because of discharges from dams and hydro --

22 MR. NELSON: Whether or not certain irrigation
23 pumps are on or off and that sort of thing, whether you
24 had rain on a particular tributary that day and that sort
25 of thing.

1 MR. WILLIAMS: Okay. That answered it. Thank
 2 you.
 3 MR. NELSON: I assume we'll hear from the
 4 technical people if that's not an accurate explanation.
 5 MR. WILLIAMS: No, that's fine.
 6 CHAIRMAN GRAY: Mr. Shawver?
 7 MR. SHAWVER: No.
 8 CHAIRMAN GRAY: Mr. Dunn?
 9 MR. DUNN: I have none.
 10 CHAIRMAN GRAY: Mr. Kramer?
 11 MR. KRAMER: None, thank you.
 12 CHAIRMAN GRAY: Thank you very much.
 13 MR. NELSON: Thank you, Mr. Chairman.
 14 CHAIRMAN GRAY: Did Representative Hansen want to
 15 testify?
 16 Mr. Hatch?
 17 MR. HATCH: Mr. Chairman, members of the Water
 18 Resources Board, you just about didn't have to hear
 19 anything out of me. I just about couldn't find you.
 20 The guy upstairs was pretty sure there wasn't
 21 anything going on down here. And I said well, I've never
 22 been to the conference room of the -- of the Supreme
 23 Court building. Would you just show it to me so I'd have
 24 an idea where it was at, and what it was like, for future
 25 reference. So he brought me down here, and low and

1 behold, here you -- here you were.
 2 I thought maybe, because of the weather and
 3 everything, that maybe you had cancelled this evening's
 4 session, knowing that you had a pretty good turn out this
 5 afternoon. So I was prepared to -- to just submit some
 6 written comments, in case I didn't find you. But -- and
 7 I won't take very much of your time.
 8 I would just like to say I really don't know
 9 the nature of exactly what -- what it was you were
 10 looking for. I a -- I took it that we were mainly
 11 commenting on the proposed changes and amendments to the
 12 state -- to the State Water Plan, as was outlined in the
 13 issue of the Currents.
 14 I guess you are interested in though -- in
 15 people's position's on the overall Swan Falls Agreement.
 16 And I will just state, for those of you might not be
 17 aware, that Idaho Farm Bureau did take a position, at
 18 their annual meeting, in support of the negotiated
 19 settlement, the compromise agreement that has been
 20 negotiated between the State of Idaho and Idaho Power.
 21 That policy that we adopted speaks to the --
 22 the establishment of the minimum flows that are being set
 23 in the amendments to the Water Plan, at Murphy, and to an
 24 adjudication of the Snake River Basin and so forth. So,
 25 from that standpoint, we are on record in support of the

1 agreement. And we are working, of course, in the
 2 legislature to try and implement the legislative end of
 3 it.
 4 In regard to the proposed amendments to the
 5 State Water Plan, I don't have too many quarrels with --
 6 with the amendments. I would only possibly make some
 7 wording recommendation changes in a couple of areas.
 8 Don't know how amenable you might be to making changes in
 9 the wording that has been presented.
 10 But on Policy 32H, where you're recommending
 11 a little bit different wording, from current policy, on
 12 water quality and pollution control, I would prefer that
 13 you use a little bit closer to the wording that was in
 14 the original Water Plan, if you might be amenable to the
 15 idea of going back -- that's on page 119 of -- of the
 16 Water Plan.
 17 And the last line of that portion of the --
 18 of Policy 32, that deals with water quality and pollution
 19 control, says, the instream flow program is directed
 20 towards meeting fish and wildlife -- fish, wildlife, and
 21 recreation needs, not to dilution of pollution.
 22 And I would urge, maybe, that the Water Board
 23 stick a little closer to that wording and just say, it is
 24 the policy of Idaho that the instream flow program is
 25 directed towards meeting fish and wildlife and recreation

1 needs, not to dilution of pollution.
 2 I don't know exactly why, but I just don't
 3 like, as a -- the wording that dilution of pollution is
 4 not a beneficial use. I -- I just don't -- I would just
 5 prefer not to use that -- that wording, it is not a
 6 beneficial use of water, if we can avoid it and just go
 7 back to that original wording. It's a -- it's kind of a
 8 nebulous thing, perhaps, but I feel that there's some
 9 potential problems down the road somewhere if we -- if we
 10 say it quite that direct, in quite that manner.
 11 The other policy that I would offer the
 12 possibilities of a little bit different wording would be
 13 on Policy 32, I guess that's I. Yeah, 321, on new
 14 storage. And I know -- I know at least one of the
 15 principal parties to the agreement might be fairly
 16 adamant on the way this is -- this is worded, but I would
 17 prefer to see it at a little more positive light, myself.
 18 I -- I don't like the terms maximums, for one
 19 thing. I would prefer that we stay away from the
 20 utilization of the terms maximum and use -- use optimum.
 21 But I would just mainly like to see that -- that policy
 22 on new storage turned a little more on the positive note,
 23 rather than being kind of couched in -- in a little more
 24 negative terms in the proposed policy.
 25 I would -- I would offer the possibility --

1 and this is, beings it is, probably, one of the longer
2 policies, if you don't -- aren't going to be able to take
3 this all down, I can certainly submit my testimony, in
4 writing, at -- at a later time, although I'm not prepared
5 to give it to you right now, unless you want my pen
6 scratching.

7 But I would prefer if -- if you might say, it
8 is the policy of Idaho that optimum use be made of the
9 existing storage facilities in the basin. That's just a
10 little bit different on using optimum instead of maximum.
11 New store -- and then I'd go on to say, new storage
12 upstream from the Murphy gage should be developed when it
13 is determined that it is needed to meet new applications
14 for the beneficial use of water in the public interest
15 and optimum use of existing storage is being made.

16 The State of Idaho will advocate new storage,
17 paid for by the federal government, to provide for
18 federal and Indian reserve rights quantified through a
19 general adjudication of the Snake River Basin.

20 Just puts us in a little bit more of a
21 positive note on the possibilities and prospects for
22 future, additional storage on the upper reaches of the
23 Snake River, for additional, future beneficial uses
24 through the appropriation process and through the
25 possibilities of needing to provide additional storage

1 is being made to try to take care of that problem that
2 you --

3 MR. HATCH: Oh, I see it.

4 MR. WILLIAMS: -- that you've brought up.

5 MR. HATCH: Excuse me, Mr. Chairman and -- and
6 Mr. Williams. And it isn't reflected in this that I have
7 before me, I take it then.

8 MR. WILLIAMS: We have -- we have two versions?

9 MR. HATCH: No, no. It -- yes, I'm sorry. It --
10 it does say insofar as possible, maximum use of storage
11 is being made. I just -- I still, Mr. Chairman and
12 Mr. Mur -- Mr. Williams, excuse me, I -- I don't like
13 the -- the utilization of maximums, is part of my
14 problem. I prefer the word optimum to maximum.

15 But I understand that -- that it is the
16 intention that it is a decision that rests largely with
17 the Director to determine when optimum, or maximum,
18 utilization is made and that it isn't necessarily to
19 squeeze every drop of water out of a facility before you
20 determine that maximum utilization is made.

21 Again, I just go back to the idea that -- my
22 feeling is that it -- that I would like to see the policy
23 couched in more positive terms towards -- towards future
24 upstream development, where my feeling is the -- the
25 policy wording is -- is a little bit on the negative side

1 for taking care of Indian reserved rights, in the
2 eventuality that we quantify those rights.

3 And we'd be better off if we were in a
4 position to go to the federal government and say, we have
5 quantified the Indian water rights. Now you have some
6 responsibility to provide water and a mechanism for
7 fulfilling those rights. And there is ample precedent
8 for the Congress of the United States taking a -- a
9 responsible position and providing, through storage or
10 some other mechanism, for providing the water necessary
11 to meet those quantified Indian reserve water rights.

12 Mr. Chairman, members of the Board, that
13 would be, I guess, the nature and extent of my comments
14 this evening. And I'd be willing to stand for any
15 questions you might have.

16 CHAIRMAN GRAY: Thank you, Mr. Hatch.

17 Mr. Williams?

18 MR. WILLIAMS: Mr. Hatch, we added the words, in
19 this Policy 321, down -- let's see, one, two, three,
20 four, five, the seventh line, if you have it in front of
21 you there, on page three, insofar as possible.

22 The original proposal says, after it -- after
23 it is determined that maximum use of existing storage is
24 being made, we add the phrase, after it is determined
25 that insofar as possible, maximum use of existing storage

1 towards future development and future upstream storage.

2 MR. WILLIAMS: Thank you.

3 CHAIRMAN GRAY: Mr. Shawver?

4 MR. SHAWVER: Mr. Chairman.

5 Mr. Hatch, I don't want to put you on the
6 spot, if you haven't had a chance to study it.
7 but on the second part of that 321 is the part about
8 mitigation on off-stream storage from north of
9 Swan Falls. Have you had a chance to give that any
10 thought? What are -- if you have, what are they; if you
11 haven't, why we appreciate the fact that you haven't
12 looked at them.

13 MR. HATCH: Well, Mr. Chairman, Mr. Shawver, I --
14 I guess I have some concerns about the terminology and
15 the idea of -- of attempting to mitigate. Mitigate's
16 a -- quite an open term.

17 I guess I feel a little bit more comfortable
18 than I would otherwise in the -- because of the language
19 in the text below that kind of tries to define what they
20 mean by the term mitigate, and that it isn't a direct
21 compensation concept. That -- that you just try to go
22 about your development of additional storage in a manner
23 that would have the least impact possible on -- on
24 hydropower production. And in that light, I can live
25 with it, I guess.

1 I -- it -- it does kind of make you nervous,
2 the idea of mitigating impacts, because I guess you --
3 you think immediately of some of the things that you've
4 heard about on anadromous fishery mitigation projects, of
5 the costs involved, and there's a -- there's a lot of
6 things that come to your mind when -- when you talk
7 about, or use the term, or think of the term mitigate.

8 But I -- I felt like that the text made it
9 clear enough what was meant, that I didn't feel like I
10 needed to comment on it. I felt, I guess, comfortable
11 enough with it.

12 MR. SHAWVER: I appreciate it. This is the 10th
13 hearing and we've had quite a bit of comment about that,
14 and I appreciate your comments. Thank you very much.

15 MR. HATCH: Well, I contemplated commenting on it.
16 But I felt like that if it's -- if it's looked at in the
17 right context, and in a reasonable manner, that -- that
18 maybe it isn't unreasonable to try, at least, to minimize
19 the impacts, if that's what you're talking about by
20 mitigating. If you're gonna try and just minimize, to
21 the extent possible, the impacts on hydroelectric
22 generation, then I -- I really don't see, I guess,
23 anything wrong with that.

24 MR. SHAWVER: Thank you for your comments.

25 CHAIRMAN GRAY: Mr. Rydalc?

1 having some problems toying with, and we've heard it all
2 down the system, is the definition of maximum and the
3 definition of optimum. And you seem to have had some
4 thought regarding optimum, and we certainly would be very
5 willing to read what you might have to say about a
6 definition of optimum.

7 MR. HATCH: Okay. I noted -- if I might follow up
8 on that. I -- one thing that stuck out with me on -- on
9 the text -- and I'm not trying to -- to get -- pick a
10 fight with anybody that might -- that might have been
11 principally responsible for -- for the wording and
12 drafting up of -- of the -- of the text.

13 But in the text, it -- it refers to the --
14 there's a sentence that says, it is not the intent to
15 prove optimum use. And then -- it uses maximum up in the
16 policy, and then down in the text it says it is not the
17 intent to prove optimum use.

18 To me, I'm -- they're using the words a
19 little bit backwards of the way I would use them. So I
20 guess -- I guess I understand what you're saying, that
21 there's apparently a -- not a complete meeting of the
22 minds of what -- what the two terms mean. But I would --
23 I would, down in the -- I would have used optimum up in
24 the text, the text of the policy. And then, down in
25 the -- in the text below, I would have said something

1 MR. RYDALCH: I appreciate your comments on new
2 storage after adjudication, referring to the federal and
3 the Indian reserve water rights. Is it possible that you
4 could submit something to us to put in the text -- the
5 text, or in the policy, before the 22nd of February? I
6 really don't know how we can write it into the policy,
7 but I appreciate your comments.

8 MR. HATCH: Mr. Chairman and Mr. Rydalc, are you
9 just saying -- asking me to submit the -- the things that
10 I have presented to you, in writing --

11 MR. RYDALCH: Yeah.

12 MR. HATCH: -- or -- or -- or additional
13 background --

14 MR. RYDALCH: No. Just what --

15 MR. HATCH: What I referred to. Yes. I'll write
16 this up and submit it to the Board.

17 CHAIRMAN GRAY: Mr. Kramer?

18 MR. KRAMER: Nothing, Mr. Chairman.

19 CHAIRMAN GRAY: Mr. Hatch, it's nice having you
20 tonight. We will accept written testimony until
21 February 22nd. You can send that to us --

22 MR. HATCH: I'll --

23 CHAIRMAN GRAY: -- at the Statehouse.

24 MR. HATCH: I'll get it whipped out and --

25 CHAIRMAN GRAY: One thing that we are having --

1 like, it is not the intent to prove maximum or to obtain
2 maximum or something like that. I would have -- I guess
3 I would have flip-flopped maximum in one -- where they
4 use optimum, and I would have been using optimum where
5 they were using maximum, so.

6 I can -- I guess I could stab -- make a stab
7 at what I -- what I think those terms mean in -- in what
8 I submit to you in written -- in written testimony.

9 CHAIRMAN GRAY: We'd appreciate that, if you
10 would. Thank you very much.

11 MR. HATCH: You bet. Thank you.

12 CHAIRMAN GRAY: Is there anyone else who would
13 like to testify at this time? If not, we will close the
14 hearing and open it up to questions.

15 We only have one person that hasn't been
16 working on this, in one form or the other. Dick, could
17 we answer some questions for you?

18 MR. HAUMANN: My only question is, how can the
19 Snake River -- how are you approaching the Snake River
20 adjudication -- Basin adjudication from -- around the
21 area of Oregon, where it leaves Idaho and then comes back
22 in Idaho? Is -- is there any -- any control the State
23 has over the Snake River in that area?

24 CHAIRMAN GRAY: Mr. Dunn?

25 MR. DUNN: No. The only -- State of Idaho only

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1 has control of the river within the boundaries of the
 2 state of Idaho. And there would be that (unintelligible)
 3 goes into Oregon. (Unintelligible.)
 4 UNKNOWN SPEAKER: I have my own question.
 5 CHAIRMAN GRAY: Fire away. You've got the heavies
 6 here to answer your questions.
 7 UNKNOWN SPEAKER: I -- I have a few
 8 (unintelligible) proposed revisions that
 9 (unintelligible.)
 10 CHAIRMAN GRAY: We will be accepting written
 11 testimony until February 22nd. And just submit it to us,
 12 in care of the Statehouse, Boise, 83720, and -- by
 13 February 22nd. And we very much appreciate you coming.
 14 Thank you.
 15 Mr. Dunn?
 16 MR. DUNN: One other thing. We talked about
 17 average daily flows at the station at Murphy. One thing
 18 the agreement calls for is to clarify that those flows
 19 are not to be measured with any changes that might result
 20 from releases out of C.J. Striker.
 21 So what we'll have to do is, if we get to a
 22 point where we think the flow might be jeopardized, is to
 23 measure at Murphy and measure above C.J. Striker, so we
 24 know what's coming in and what's going out. I think,
 25 obviously, it affects the flow (unintelligible.)

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1 CHAIRMAN GRAY: Thank you.
 2 Yes, sir?
 3 UNKNOWN SPEAKER: Mr. Chairman, I think one of the
 4 proponents -- that we heard tonight about optimization
 5 and maximization (unintelligible) technical people
 6 involved in some of the optimization techniques
 7 (unintelligible.) I think that might bear out some more
 8 research on our part, to determine exactly what that
 9 definition is couched in and also might be interpreted as
 10 (unintelligible) reversed it.
 11 In school, we were taught to write lineal
 12 (unintelligible) equations to optimize certain factors.
 13 And that's a fancy way of -- of trying to get the best
 14 use out of your water. Well, I really think you're
 15 saying the same thing. I think, to be fair, you probably
 16 (unintelligible), you do want to maximize it. But do we
 17 really want to optimize it? And those definitions
 18 (unintelligible) do have a difference (unintelligible.)
 19 CHAIRMAN GRAY: I think, maybe, one of the
 20 problems the Board may be having is when you consider
 21 optimum on one hand and maximum on the other. What might
 22 be maximum, or optimum, for an agricultural situation.
 23 may not, in the same hand, be maximum, or optimum, for
 24 recreation, or wildlife, or hydropower. So this is
 25 something that -- that we're trying to get a feeling for,

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1 and it's -- it's pretty darn tough when you have that
 2 many disciplines to work with. And I thank you for your
 3 comments.
 4 Any other comments? Mr. Hatch?
 5 MR. HATCH: That -- just if I might respond,
 6 That's what I (unintelligible) were saying up there a
 7 minute ago. That apparently, from some technical
 8 standpoints, there must be some different definitions for
 9 maximum and optimum that I, as a layperson, don't think
 10 in those terms.
 11 I'm a person that -- that unless it's spelled
 12 out that these are technical terms, and maybe the
 13 technical terms are defined, then I -- I would tend to
 14 stick to lay definitions of the terms, you know. Because
 15 I think we're talking about a document that is
 16 essentially a lay document.
 17 So I -- if the document means different to a
 18 technical person, a water hydrologist or whatever
 19 (unintelligible) degree, than it means to a lay person, I
 20 would either stick to the lay -- lay concepts, or I would
 21 let it be known that the document (unintelligible)
 22 technical terms.
 23 (Unintelligible) put optimum, my terminology
 24 put optimum, because it sounds to me like
 25 (unintelligible).

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1 CHAIRMAN GRAY: Well, there are certainly times
 2 when a lay person must (unintelligible) from those
 3 returning to that particular discipline also. And I
 4 think that's why the State pays people like them. And
 5 when it comes to the point that the State doesn't put
 6 their trust and confidence in those people that we have
 7 hired, then it's time to get someone new.
 8 MR. HATCH: (Unintelligible.) If -- if we're --
 9 if we're gonna use technical terms, I -- all I'm saying
 10 is that maybe it should -- should let -- let know in
 11 the -- in the thing, some way, that we are using
 12 technical terms and not just lay terms.
 13 CHAIRMAN GRAY: Thank you.
 14 Mr. Sherman?
 15 MR. SHERMAN: (Unintelligible) point you may wish
 16 to drop (unintelligible.) The point that I really did
 17 want to make though, is that, this afternoon, Mr. Keys
 18 was (unintelligible) point, and he expressed some
 19 concerns about this maximization (unintelligible)
 20 allocation. And I think that the Board should consider
 21 (unintelligible) pointing out it is not the intent of the
 22 Board to make (unintelligible.) That may help.
 23 CHAIRMAN GRAY: Thank you.
 24 Mr. Nelson?
 25 MR. NELSON: Mr. Chairman, though I hesitate to

1 suggest changes in what you've done, because of the --
2 the problem of moving away from what the negotiators
3 negotiated, and I honestly can't speak for the -- for the
4 parties, the negotiators used the term full utilization
5 or fully utilized, and your staff selected maximum as --
6 as more definitive of what we intended.

7 But do you remember the discussions we had at
8 the information hearing. What -- what we were getting at
9 was a policy review that the State should go back, look
10 at how water is used, what constraints exist on that
11 water use, and is that what we want? It wasn't the idea
12 that you force people to do anything with their water,
13 Merely to identify the constraints, identify the uses
14 that you may (unintelligible) as much as Mr. Keys
15 testified about federal constraints on leasing, that you
16 can't make a profit. Well, I've heard the Bureau say you
17 can make a profit, maybe, if you put -- give the profit
18 back to the United States in terms of early pay out of
19 your obligation on that (unintelligible).

20 All we wanted to do was force them to review.
21 So, to me, the concept that is -- is missing, from what
22 people read and what we have, is reasonable. In other
23 words, there are no absolutes, either in what we intended
24 or what you've written, except the concept of
25 reasonableness.

1 And I don't think we can go through and say,
2 well by golly, the federal government has a constraints
3 here, and it keeps us from making the best use of the
4 water. I think you might have to make one step further
5 and fight the changes.

6 So if, at some point, you've done all those
7 things and you've finally realized your pick is about as
8 far in that ground as it's going to go, and you say okay,
9 that's it. That's all we can reasonably do, to make the
10 existing system fit our needs. Now let's go build
11 something else.

12 But it was our perception that those
13 questions ought to be asked. They, frankly, didn't know
14 what the answers would be when you did answer them, but
15 somebody should go ask the questions.

16 CHAIRMAN GRAY: Is that sort of like semantics
17 give attorneys jobs?

18 MR. NELSON: Something like that.

19 CHAIRMAN GRAY: Which is good.

20 UNKNOWN SPEAKER: Mr. Chairman, I think we've
21 solved it over on this end. The Director supports the
22 good use and opposes the bad use of water, you've got it
23 made.

24
25 (End of Tape 3.)

REPORTER'S CERTIFICATE

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November, 2007.

NOTARY PUBLIC in and for the State
of Idaho; residing at Boise, Idaho

My commission expires 12-11-09

CSR No.

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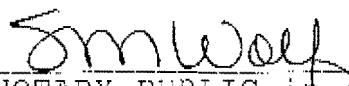
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I, Susan M. Wolf, Registered Professional Reporter, a Notary Public in and for the State of Idaho, do hereby certify:

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